Simon v. Adzilla, Inc [New Media] et al Doc. 62

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN JOSE DIVISION

THE FACEBOOK, INC. AND MARK ZUCKERBERG, PLAINTIFFS, VS. CONNECTU, INC. (FORMERLY KNOWN AS CONNECTU, LLC), PACIFIC NORTHWEST SOFTWARE, INC., WINSTON WILLIAMS, AND WAYNE CHANG, DEFENDANT.	)	C-07-01389 JW SAN JOSE, CALIFORNIA AUGUST 6, 2008 PAGES 1-73

TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE JAMES WARE
UNITED STATES DISTRICT JUDGE

A P P E A R A N C E S:

FOR THE PLAINTIFF: ORRICK, HERRINGTON & SUTCLIFFE
BY: I. NEEL CHATTERJEE,
MONTE M.F. COOPER, AND
YVONNE GREET
1000 MARSH ROAD
MENLO PARK, CALIFORNIA 94025

APPEARANCES CONTINUED ON NEXT PAGE

OFFICIAL COURT REPORTER: LEE-ANNE SHORTRIDGE, CSR, CRR
CERTIFICATE NUMBER 9595

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APPEARANCES (CONTINUED)

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FOR INTERVENOR: O'SHEA PARTNERS, LLP
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MARK A. WEISSMAN
90 PARK AVENUE, 20TH FLOOR
NEW YORK, NEW YORK 10016

SAN JOSE, CALIFORNIA AUGUST 6, 2008

P R O C E E D I N G S

(WHEREUPON, COURT CONVENED AND THE FOLLOWING PROCEEDINGS WERE HELD:)

THE CLERK: CALLING CASE NUMBER 07-01389, THE FACEBOOK, INC., VERSUS CONNECTU, INC., ET AL, ON FOR NON-PARTIES' MOTION TO INTERVENE, AND DEFENDANT'S MOTION TO STAY EXECUTION OF JUDGMENT PENDING APPEAL.

COUNSEL, PLEASE COME FORWARD AND STATE YOUR APPEARANCES.

MR. O'SHEA: YOUR HONOR, SEAN O'SHEA AND MIKE WEISSMAN FOR APPLICANT INTERVENORS.

MR. UNDERHILL: YOUR HONOR, MICHAEL UNDERHILL FOR CONNECTU, THE DEFENDANT.

MR. CHATTERJEE: YOUR HONOR, NEEL CHATTERJEE FOR MARK ZUCKERBERG AND FACEBOOK.

AND WITH ME IS MONTE COOPER AND YVONNE GREER.

MR. FISHER: AND GEORGE FISHER.

THE COURT: I'M SORRY. I DID NOT GET YOUR APPEARANCE, PLEASE. YOU'RE NEW TO THIS, SO CAN YOU GIVE ME YOUR NAME AGAIN?

MR. O'SHEA: YES, YOUR HONOR, SEAN O'SHEA.

16:45:10 THE COURT: MR. O'SHEA.

16:45:10 MR. O'SHEA: AND I'M HERE WITH MARK WEISSMAN.

16:45:12 THE COURT: MR. WEISSMAN.

16:45:15 I HAVE TWO MATTERS, MAYBE MORE, BUT I HAD TWO THAT I HAD INTENDED TO GIVE YOU SOME TIME TO ADDRESS.

16:45:23 THE FIRST IS THIS MOTION TO INTERVENE, AND THEN THE SECOND IS A MOTION TO STAY EXECUTION OF THE JUDGMENT.

16:45:32 PERHAPS IT WOULD FORESHORTEN YOUR ARGUMENT IF I COMMENT ON THIS FIRST MOTION AND TELL YOU WHAT I HAVE AS AN INTENDED DECISION.

16:45:45 IT DOES SEEM -- PLEASE BE SEATED.

16:45:48 IT DOES SEEM TO THE COURT THAT THIS IS A CIRCUMSTANCE WHERE THE TWO INDIVIDUALS WHO SEEK TO INTERVENE IN THE CASE ARE IDENTIFIED IN INTEREST SUFFICIENTLY WITH CONNECTU THAT THE COURT IS DISPOSED TO ALLOW THEM TO INTERVENE IN THE LAWSUIT.

16:46:12 I HAVEN'T DONE THE INDEPENDENT LOOK THAT I WOULD OTHERWISE WANT TO DO, BUT MY STAFF ADVISES ME THAT THESE INDIVIDUALS WERE PREVIOUSLY BEFORE THE COURT IN THIS ACTION AND SOUGHT TO BE DISMISSED FROM THE ACTION ON THE GROUNDS THAT THE COURT LACKED PERSONAL JURISDICTION OVER THEM.

I HAVEN'T LOOKED TO SEE WHETHER OR NOT THEY ARE LITIGANTS BEFORE THE OTHER CASE THAT WAS PENDING BETWEEN THESE PARTIES WHICH WAS INCLUDED IN THE SETTLEMENT THAT THEY REACHED.

BUT IT CERTAINLY IS CLEAR TO THE COURT THAT THEY HAVE A SUFFICIENT INTEREST IN THIS MATTER THAT THEY SHOULD BE RECOGNIZED AS PARTIES TO THE EXTENT THAT THEIR INTEREST MIGHT BE AFFECTED BY THE CONDUCT OF THE COURT.

AND SO THAT WOULD BE THE FIRST THING I'D WISH TO HAVE ARGUED IS WHETHER OR NOT THERE'S A REASON TO NOT PERMIT THEM TO INTERVENE.

FOR ME, QUITE FRANKLY, THOUGH, THE MORE IMPORTANT QUESTION IS WHETHER OR NOT THEY SHOULD BE PERMITTED TO INTERVENE FOR ALL PURPOSES AND TO FILE THE PROFFERED COMPLAINT IN INTERVENTION.

THE COMPLAINT IN INTERVENTION SEEKS TO PLEAD A CLAIM THAT IS -- THAT HAS -- THAT IS PARALLEL TO THE CASE THAT, IN THE COURT'S VIEW, IS SUBSUMED BY THE JUDGMENT IN THIS CASE, AND IN THE COURT'S VIEW SEEKS TO REOPEN, FOR LITIGATION AGAINST -- I'M NOT SURE WHO THE DEFENDANT IN INTERVENTION IS. IT SEEMS THAT THAT'S UNCLEAR TO ME -- BUT SEEKS TO REOPEN INTO LITIGATION IN A NEW PLEADING WITH NUANCES AND DISCOVERY AND PRESUMABLY

TRIALS, MATTERS THAT ARE -- OR AS THE COURT IS CONCERNED, COVERED BY THE JUDGMENT.

AND SO IT IS MY INTENTION TO GRANT THE MOTION TO INTERVENE, BUT TO ALLOW THE INTERVENTION FOR PURPOSES OF THE APPEAL AND FOR PURPOSES OF ANY POST-JUDGMENT PROCEEDINGS, SO THAT IF IT -- IF THE CASE PROCEEDS ON APPEAL TO THE POINT WHERE IT'S REMANDED BACK TO THIS COURT FOR FURTHER PROCEEDINGS, THEY WOULD BE PARTIES FOR THOSE FURTHER PROCEEDINGS, AND THERE MAY BE POST-JUDGMENT MATTERS THAT COME BEFORE THIS COURT THAT ARE STILL WITHIN THE JURISDICTION OF THE COURT WHILE THE CASE IS ON APPEAL.

I'VE BEEN ADVISED THAT THERE'S AN APPEAL. AGAIN, I HAVEN'T SEEN THE NOTICE OF THE APPEAL AND I HAVEN'T -- I'VE NOT INFORMED MYSELF FURTHER WITH RESPECT TO THAT.

SO THAT'S THE OTHER INTENT THAT I WANT TO DISCLOSE IS AN INTENT TO PERMIT INTERVENTION, BUT FOR A LIMITED PURPOSE.

THE QUESTION THAT I ASKED MYSELF, THOUGH, IN THIS UNUSUAL PROCESS IS, WHAT IS -- WHAT PROCEDURAL DEVICE DOES THE COURT NEED TO USE TO RECOGNIZE INTERVENTION FOR THIS LIMITED PURPOSE? HOW DO I RECOGNIZE IT?

THERE'S NO COMPLAINT IN INTERVENTION THAT DOES IT. IT SIMPLY SEEMS TO BE AN ORDER PERMITTING THAT INTERVENTION WITH THE IDEA THAT IF THE CASE RETURNS TO A LITIGATED STATUS, THEN I NEED TO SORT OUT WHETHER THEY ARE INTERVENING AS PLAINTIFFS OR DEFENDANTS AND WHO ARE THE PARTIES AGAINST WHOM THEY WOULD BE PURSUING THEIR CLAIMS.

LET ME PAUSE WITH THOSE INTRODUCTORY COMMENTS AND INVITE MR. O'SHEA OR OTHERS TO COMMENT ON THE COURT'S INTENDED DECISION.

MR. O'SHEA: THANK YOU, YOUR HONOR.

FIRST OF ALL, JUDGE, THANK YOU FOR HEARING US ON SHORT NOTICE. WE APPRECIATE IT AND WE ARE -- YOU'RE CORRECT THAT WE'RE NEW TO THE FRAY HERE.

THIS INTERVENTION MOTION, YOUR HONOR, IS STRAIGHTFORWARD. WE'RE HERE ON BEHALF OF ACTUALLY THREE PERSONS SEEKING INTERVENTION. THE APPLICANT INTERVENORS ARE TYLER AND CAMERON WINKLEVOSS, WHO ARE BROTHERS, AND DIVYA NARENDRA, AS YOUR HONOR IS AWARE, THE INDIVIDUALS WHO SIGNED THE TERM SHEET WHICH YOUR HONOR HELD ENFORCEABLE AND THAT IS GOING TO BE THE SUBJECT OF AN APPEAL.

ONE OF THE TERMS OF THAT TERM SHEET IS THAT FACEBOOK GETS OWNERSHIP OF CONNECTU STOCK.

UNTIL VERY RECENTLY, JUDGE, MY CLIENTS BELIEVED, AND HAD A SOUND BASIS FOR THAT BELIEF, THEY BELIEVED THAT THEIR RIGHTS ON APPEAL COULD BE ADEQUATELY PROTECTED BY CONNECTU SINCE YOUR HONOR HAD APPOINTED A SPECIAL MASTER, MR. FISHER, WHO IS HERE TODAY, TO MAINTAIN THE STATUS QUO, AND WE WERE AT THAT POINT HAPPY WITH THAT, WITH THAT STATE OF EVENTS.

SINCE THEN, YOUR HONOR, FACEBOOK HAS BEEN ASSERTING THAT IT WILL TAKE CONTROL OF CONNECTU'S LITIGATIONS ONCE IT TAKES CONTROL OF CONNECTU'S STOCK, AND WE'VE BECOME VERY CONCERNED THAT WHILE CONNECTU'S APPEAL IS PENDING IN THE NINTH CIRCUIT, THAT FACEBOOK WILL TRY TO ASSUME CONTROL OF CONNECTU AND ABANDON OR OTHERWISE HAMPER OR IMPAIR THE APPEAL.

I UNDERSTAND FROM MR. UNDERHILL, WHO REPRESENTS CONNECTU, THAT HE HAS ASKED FOR ASSURANCES FROM MR. CHATTERJEE, FACEBOOK'S COUNSEL, THAT MY CLIENTS' RIGHTS WILL NOT BE -- AND CONNECTU'S RIGHTS WILL NOT BE IMPAIRED ON APPEAL, THAT THE APPEAL WILL BE ALLOWED TO GO FORWARD.

BUT FACEBOOK HAS BEEN UNWILLING TO AGREE TO GIVE THOSE ASSURANCES.

AND, INDEED, IN THEIR OPPOSITION TO THE

STAY MOTION, JUDGE, THEY'VE NOW SAID THAT THE APPEAL IS, IN FACT, MOOT. THEY'VE TAKEN THAT POSITION.

SO THAT'S WHY WE'RE HERE TODAY, JUDGE. WE NEED TO INTERVENE. WE NEEDED TO INTERVENE ON SHORT NOTICE SINCE MY CLIENTS NEED REALLY TO PRESERVE THEIR RIGHTS ON APPEAL.

AND TO ADDRESS YOUR HONOR'S CONCERNS ABOUT TRYING TO REOPEN OR RELITIGATE THE UNDERLYING MATTER, THAT'S NOT OUR PURPOSE BEFORE THE COURT HERE TODAY.

WHAT OUR PURPOSE IS, IS TO GET THE COMPLAINT BEFORE THE COURT SO THAT WE CAN PRESERVE OUR RIGHT TO APPEAL, AND THAT'S WHAT WE'D LIKE TO DO.

INTERVENTION IS APPROPRIATE, YOUR HONOR, AND AS YOU KNOW, THE STANDARD FOR, FOR APPLICATION OF INTERVENTION IS VERY LIBERAL. OUR -- IT'S APPROPRIATE HERE UNDER BOTH SECTIONS, SUBSECTIONS OF RULE 24.

FIRST OF ALL, FOR AN INTERVENTION AS A RIGHT, WE MEET ALL FOUR PRONGS OF THE TEST: ONE, WE'RE TIMELY; SECOND, WE HAVE A SIGNIFICANTLY PROTECTABLE INTEREST; THIRD, THE DISPOSITION OF THIS ACTION, AS A PRACTICAL MATTER, COULD IMPAIR

OUR INTERESTS; AND, FOURTH, OUR INTERESTS NOW ARE NOT ADEQUATELY PROTECTED OR MAY NOT BE ADEQUATELY PROTECTED BY CONNECTU.

MY CLIENTS MEET ALL FOUR PRONGS OF THIS TEST.

AND FACEBOOK, FOR ITS PART IN ITS PAPERS, HAS NOT CONTESTED THE SECOND OR THIRD PRONG.

SO MY CLIENTS HAVE, AS TO PRONG 2, A CLEAR PROTECTABLE INTEREST IN THEIR OWNERSHIP, THEIR PROPERTY INTEREST IN CONNECTU. THEY HAVE AN INTEREST IN THE CLAIMS AGAINST FACEBOOK, AND FACEBOOK, AGAIN, DOESN'T CHALLENGE THIS.

WE ALSO, YOUR HONOR, HAVE AN INTEREST IN THE APPEAL IN THIS CASE.

AND FACEBOOK REALLY DOESN'T ADDRESS THAT IN THEIR PAPERS, BECAUSE TO DO SO, I THINK, REALLY REVEALS WHAT FACEBOOK'S TRUE PURPOSE HERE IS, AND THAT IS TO DENY MY CLIENTS THEIR APPELLATE RIGHTS.

THE DISPOSITION OF THE ACTION, THE THIRD PRONG, WE ALSO MEET.

YOUR HONOR, AS A PRACTICAL MATTER, THAT WILL IMPAIR THE INTERESTS OF MY CLIENT.

YOUR HONOR'S ORDER REQUIRES THEM TO HAND OVER THEIR STOCK TO FACEBOOK, THEIR CONNECTU STOCK TO FACEBOOK TO EXECUTE RELEASES AND DISMISS ALL THE

ACTIONS.

SO IF YOUR HONOR'S ORDER IS UPHELD, MY CLIENTS WILL LOSE THEIR PROPERTY RIGHTS IN CONNECTU SHARES, AND THEIR INDIVIDUAL CLAIMS AGAINST FACEBOOK.

AS TO THE FOURTH PRONG, THEY -- WHETHER THE APPLICANTS' INTERESTS ARE ADEQUATELY REPRESENTED BY CONNECTU, IF FACEBOOK TAKES CONTROL, THAT WILL NOT BE THE CASE, JUDGE.

WE MEET THAT FOURTH PRONG BECAUSE OF THAT REASON, AND, AGAIN, THIS FOURTH PRONG ONLY REQUIRES A MINIMAL SHOWING.

AND A CASE THAT FACEBOOK ACTUALLY CITED IN ITS BRIEF MAKES THAT CLEAR, AND THAT'S THE UNITED MINE WORKERS CASE IN THE SUPREME COURT, AND IT SAYS THAT THE MINIMAL SHOWING IS THAT MY CLIENTS' INTERESTS MAY NOT BE ADEQUATELY REPRESENTED.

AND HERE, YOUR HONOR, WE CAN DO FAR MORE THAN THAT MINIMAL SHOWING.

AS I MENTIONED, FACEBOOK IS SEEKING TO GAIN CONTROL OF THE CONNECTU SHARES.

AND WE SUSPECT, AND HAVE A STRONG BELIEF IN THAT REGARD, IT'S BECAUSE THEY HAVEN'T BEEN SUBTLE IN THEIR ATTEMPTS TO ACTUALLY TAKE CONTROL

OF CONNECTU AND EITHER ABANDON OR OTHERWISE IMPAIR THE APPEAL THAT CONNECTU HAS TAKEN.

THE COURT: SO LET ME INTERRUPT.

THE REASON I GAVE YOU MY INTENDED DECISION IS TO NARROW THIS, AND I'M CONCERNED THAT YOUR COMMENTS SEEM TO ARGUE AGAINST YOUR OPPONENT. IT DOESN'T EMBRACE THE DIRECTION THAT THE COURT INTENDS TO GO.

SO IF I GRANT YOUR INTERVENTION AND I LIMIT IT TO -- FOR PURPOSES OF APPEAL AND POST-JUDGMENT RELIEF, HOW ARE YOU HARMED?

MR. O'SHEA: JUDGE, I THINK IF, IF WHAT YOUR HONOR AND THE COURT -- IF WHAT THE COURT'S INTENDING TO DO IS TO ALLOW MY, MY CLIENTS TO INTERVENE FOR PURPOSES OF THE APPEAL AND POST-JUDGMENT, I THINK THAT'S SUFFICIENT TO PROTECT OUR INTERESTS AT THIS POINT.

AND AS I SAY, THE COMPLAINT IS NOT AN ATTEMPT TO REOPEN, FOR EXAMPLE, LIKE THE SNYDER CASE WHERE SOMEONE COMES IN IN A SHAM PROCEEDING AND ATTEMPT TO RELITIGATE THIS MATTER BEFORE YOUR HONOR. THAT'S NOT OUR MOTIVE AT ALL.

THE COURT: WELL, WHAT I'M -- WHAT I'M INVITING YOU TO COMMENT NEXT ON, I GUESS, IS, FOR PURPOSES OF MY ORDER, THEN, I WOULD NOT PERMIT YOU

16:55:55 TO FILE YOUR COMPLAINT IN INTERVENTION BECAUSE I, I
16:55:58 READ IT AS OPENING UP MATTERS THAT ARE
16:56:03 PRE-JUDGMENT.
16:56:03 IT DOES NOT EMBRACE THE JUDGMENT. IT
16:56:06 SEEMS TO ATTACK THE JUDGMENT, WHICH IS SOMETHING
16:56:08 THAT COULD HAPPEN ONCE THE JUDGMENT IS SET ASIDE.
16:56:11 IT SEEMS TO ME NECESSARY FOR THERE TO BE
16:56:14 A PROCESS BY WHICH THE JUDGMENT IS SET ASIDE BEFORE
16:56:17 THE LITIGATION OF THE EVENTS PRE-JUDGMENT CAN COME
16:56:20 BACK BEFORE THE COURT.
16:56:21 MR. O'SHEA: I THINK YOUR HONOR IS
16:56:22 CORRECT. I THINK THAT IF -- IF WE FIRST HAVE TO GO
16:56:25 TO THE NINTH CIRCUIT AND THE NINTH CIRCUIT HAS TO
16:56:28 RULE ON, ON YOUR HONOR'S RULING IN THE CASE ON
16:56:30 ENFORCING THE TERM SHEET, THAT -- AT LEAST WE GET
16:56:34 TO VINDICATE OUR APPELLATE RIGHTS.
16:56:37 AND THEN IF WE COME DOWN HERE AND THERE
16:56:38 ARE OTHER THINGS TO ADJUDICATE, THEN WE CAN DO THAT
16:56:41 IN FRONT OF THIS COURT.
16:56:42 BUT I THINK IT IS SUFFICIENT FOR YOUR
16:56:43 HONOR TO ALLOW US TO INTERVENE AT THIS POINT ON
16:56:47 THIS CASE FOR APPELLATE PURPOSES.
16:56:49 THE COURT: ALL RIGHT. LET ME ASSUME
16:56:51 THAT THAT IS WHAT I WILL DO UNTIL I AM PERSUADED BY
16:56:56 YOUR OPPONENT OTHERWISE.

IS THERE ANYTHING MORE, INDEPENDENT OF THE STAY QUESTION, THAT YOU WOULD WISH TO ARGUE AT THIS TIME?

MR. O'SHEA: WELL, JUST, YOUR HONOR, THAT I WOULD ASK FOR TIME TO, TIME UNDER RULE 4 TO, TO FILE OUR, OUR APPEAL, AND I THINK 14 DAYS OUGHT TO DO IT.

THE COURT: THANK YOU.

LET'S HEAR FROM ANYONE WHO OPPOSES THE INTENDED DECISION OF THE COURT.

MR. CHATTERJEE: YOUR HONOR, RESPECTFULLY, WE DISAGREE WITH YOU ON THIS ONE.

ONE OF THE COMMENTS YOUR HONOR MADE WHEN, WHEN YOU WERE DISCUSSING YOUR TENTATIVE RULING WAS YOU WEREN'T SURE IF THE THREE INDIVIDUALS WERE PARTIES TO ANY OF THE CASES.

AND YOU MIGHT RECALL, YOUR HONOR, AT THE, AT THE MOTION TO ENFORCE HEARING, WHICH WAS THE HEARING BEFORE THE JUDGMENT, WE HAD A DISCUSSION, AND THE DISCUSSION WAS -- CONNECTU WAS HERE REPRESENTED BY MR. UNDERHILL, AND THE ISSUE WAS, DID THREE SHAREHOLDERS HAVE NOTICE OF THE MOTION AND AN OPPORTUNITY TO OPPOSE?

THOSE THREE SHAREHOLDERS ARE THE VERY SAME PEOPLE WHO ARE TRYING TO INTERVENE TODAY.

THEY HAVE KNOWN ABOUT THIS MOTION, THEY SUBMITTED DECLARATIONS IN OPPOSITION ON BEHALF OF CONNECTU, THEY SHOWED UP IN COURT IN BOSTON, YET THEY'VE MADE THE STRATEGIC DECISION NOT TO OPPOSE THE MOTION THEMSELVES, AND YOUR HONOR ACKNOWLEDGED THE NOTICE ISSUE IN YOUR ORDER ENFORCING THE JUDGMENT.

THIS IS NOT SOMEONE NEW. IT'S SOMEONE THAT'S BEEN INVOLVED IN THIS. THEY SIGNED THE SETTLEMENT AGREEMENT BACK IN FEBRUARY. THEY PARTICIPATED THROUGHOUT THE PROCESS ON BEHALF OF CONNECTU, AND THEY MADE A STRATEGIC DECISION NOT TO GET INVOLVED IN OPPOSING IT THEMSELVES IN CHALLENGING THE ENFORCEMENT.

YOUR HONOR, UNDER THAT CIRCUMSTANCE, THEY DID NOT ACT PROMPTLY. THEY MADE A STRATEGIC DECISION NOT TO GET INVOLVED, AND IN THOSE CIRCUMSTANCES, YOUR HONOR, I DON'T THINK INTERVENTION IS PROPER.

THE COURT: HOW IS -- HOW IS YOUR CLIENT, OR YOUR CLIENTS, HOW ARE THEY HARMED WITH RESPECT TO THIS MATTER IF THESE THREE INDIVIDUALS ARE PERMITTED TO INTERVENE FOR PURPOSES OF APPEAL OR POST-JUDGMENT PROCEEDINGS?

MR. CHATTERJEE: WELL, FIRST, YOUR HONOR, IT WILL DELAY THINGS OBVIOUSLY. YOU JUST HEARD

MR. O'SHEA ASK FOR ADDITIONAL TIME.

THE SECOND ISSUE IS THAT IT WILL ALLOW FOR ADDITIONAL LITIGATION, MORE PEOPLE WE HAVE TO DEAL WITH AND THE LIKE.

OUR VIEW IS WE OWN CONNECTU.

CONNECTU IS THE ONLY PERSON WHO OPPOSED THE MOTION. WE EVEN SAID IN OUR OPPOSITION BRIEF, I MEAN IN OUR REPLY BRIEF THAT THEY WAIVED -- THEY SUBMITTED SURREPLIES WITH DECLARATIONS FROM CAMERON WINKLEVOSS, ONE OF THE PEOPLE SEEKING TO INTERVENE HERE, HAVING TO DEAL WITH THE COLLATERAL CONSEQUENCES OF ADDING ADDITIONAL PARTIES, WHICH HAS BEEN RECOGNIZED AS HARM UNDER, UNDER THE INTERVENTION CASE LAW, IS, IS SOMETHING THAT IS PREJUDICIAL. IT CAUSES DELAYS THAT WE SHOULDN'T HAVE TO FACE.

WE SIGNED AN AGREEMENT. THEY DON'T WANT TO HONOR IT. THEY STILL HAVEN'T PUT THEIR SHARES INTO THE ESCROW, OR INTO THE SPECIAL MASTER'S HANDS.

THE COURT: LET ME POKE AT IT IN A DIFFERENT WAY.

THIS IS A CIRCUMSTANCE WHERE THE THREE INDIVIDUALS, AT LEAST TWO OF THEM PERHAPS, SIGNED THE, THE DOCUMENT THAT CAME BEFORE THE COURT FOR

ENFORCEMENT.

MR. CHATTERJEE: ALL THREE OF THEM DID, YOUR HONOR.

THE COURT: ALL THREE.

NOW, AT THE TIME THEY DID THAT, I DON'T HAVE IT IN FRONT OF ME NOW, BUT THERE WAS A QUESTION THAT CAME UP IN THE COURT'S MIND, AND I ADDRESSED IT IN MY ORDER WITH RESPECT TO THE OBLIGATION OF ALL SIGNATORIES, EVEN THOSE WHO WERE NOT PARTIES TO THE LITIGATION, TO HONOR THE AGREEMENT THAT THEY HAD MADE BECAUSE IT WAS AN OBLIGATION TO ENFORCE THE AGREEMENT ON THE PART OF ALL SIGNATORIES.

IT SEEMS TO ME THAT EVENTUALLY IT MIGHT HAVE BECOME NECESSARY, IF THERE WAS NO VOLUNTARY COMPLIANCE, FOR THE COURT TO BRING THEM INTO THE ACTION FOR PURPOSES OF ENFORCING ITS ORDER BY WAY OF A CONTEMPT ORDER OR WHATEVER.

AND SO I'M NOT CERTAIN I UNDERSTAND A BASIS FOR NOT RECOGNIZING THEM, FIRST AS PARTIES WHO ARE OBLIGATED TO ABIDE BY THE JUDGMENT OF THE COURT; AND AT THE SAME TIME, RECOGNIZE THEM AS PARTIES WHO MAY LEGITIMATELY ARGUE SUCCESSFULLY, OR NOT, THAT THE COURT WAS IN ERROR IN REQUIRING THEM TO TAKE THE ACTION THAT THE COURT REQUIRED THEM TO

TAKE.

MR. CHATTERJEE: A FAIR QUESTION, YOUR HONOR, AND I THINK THIS GOES DIRECTLY TO THE STRATEGIC ISSUE, THE STRATEGIC DECISIONS THAT THE INDIVIDUALS MADE.

RATHER THAN ENTERING INTO THE CASE AND, AND MAKING THE OPPOSITIONS AT THE TIME THEY COULD HAVE, THEY MADE THE STRATEGIC DECISION TO CHALLENGE JURISDICTION AND NOTICE.

YOUR HONOR FOUND THAT THEY SAID IN THAT AGREEMENT THAT THEY SIGNED THAT THEY WERE SUBJECT TO THE JURISDICTION OF THIS COURT.

NOW, I SEE TWO SEPARATE ISSUES ASSOCIATED WITH YOUR COMMENTS.

THE FIRST QUESTION IS, ARE THE INDIVIDUALS SUBJECT TO THE JURISDICTION OF THIS COURT FOR PURPOSES OF THE JUDGMENT THAT'S BEEN ENTERED?

YOUR HONOR DECIDED THAT THEY IRREVOCABLY SAID THEY WOULD SUBJECT THEMSELVES TO THE JURISDICTION OF THIS COURT FOR PURPOSES OF THE ENFORCEMENT OF THIS AGREEMENT.

THAT DOESN'T MEAN THEY NEED TO BE A PARTY TO THIS LITIGATION. IT MEANS THAT THEY ARE SUBJECT TO THE JURISDICTION OF THIS COURT.

THE SECOND ISSUE IS, ARE THEY A PARTY TO THIS CASE?

THEY ARE A PARTY TO THE CASE IN BOSTON. THAT'S BEEN RECOGNIZED.

THEY FOUGHT JURISDICTION IN THIS CASE PRIOR TO ENTERING INTO THE SETTLEMENT AGREEMENT.

AND THEY CHOSE NOT TO BECOME PARTIES IN OPPOSING THE, THE OP -- IN OPPOSING THE MOTION TO ENFORCE.

THERE'S NO NEED FOR THEM TO BE REWARDED FOR THOSE STRATEGIC DECISIONS THAT THEY MADE.

BUT THEY ARE SEPARATE ISSUES, WHETHER THEY'RE SUBJECT TO THE JURISDICTION OF THE COURT AND WHETHER THEY'RE PARTIES AS IT RELATES TO THE ENFORCEMENT OF THE CONTRACT.

THEY CHOSE NOT TO BE THE LATTER.

THE COURT: IS THERE, IN YOUR MIND, A DIFFERENCE BETWEEN THE OBLIGATION OF THE INDIVIDUALS AND CONNECTU?

MR. CHATTERJEE: IS THERE A DIFFERENCE BETWEEN THE OBLIGATIONS OF THE INDIVIDUALS AND CONNECTU?

YOUR HONOR, IN YOUR JUDGMENT, YOU LISTED ALL OF THEM AS BEING ORDERED TO DO CERTAIN ACTS AND TO EFFECTUATE WHATEVER ACTS WERE NECESSARY IF THERE

WAS AN INVOLUNTARY SHAREHOLDER, AND TO THE EXTENT THAT THAT JUDGMENT READS THAT THEY ALL HAVE ESSENTIALLY THE SAME SET OF OBLIGATIONS, THEY MIGHT INDIVIDUALLY HAVE TO DO SOME THINGS UNDER CONNECTICUT CORPORATE LAW, BUT I READ THE JUDGMENT AS SAYING THEY HAVE TO DO WHATEVER THEY'RE SUPPOSED TO DO UNDER CONNECTICUT LAW.

THE COURT: WELL, I'M NOT PERSUADED THAT THE DELAY THAT WOULD BE OCCASIONED BY ALLOWING THEM TO INTERVENE, IF I LIMITED IT TO APPEAL, THAT YOU'RE TALKING ABOUT, WHICH IS THEY MAY GET ADDITIONAL TIME BEFORE THE APPELLATE COURT TO FILE THEIR BRIEFS AND TO GET INVOLVED IN THE ACTION, NOR THE ADDITIONAL LITIGATION THAT WOULD PERHAPS BE CAUSED BY HAVING NOW YET ANOTHER VOICE SPEAKING ON THIS ISSUE, IS COMPELLING ENOUGH FOR THE COURT TO KEEP THEM OUT OF THE CASE.

MY MOTIVATION IS TO -- BECAUSE I THINK MY JUDGMENT IS CORRECT.

MY MOTIVATION IS TO BRING THEM IN THE CASE SO I CAN ENFORCE THE JUDGMENT AGAINST THEM, AND IT'S COUNTERINTUITIVE TO THE COURT TO BE IN A SITUATION WHERE THEY INITIALLY SAID "WE DON'T WANT TO BE," AND I'M SAYING, "NO, YOU'RE REQUIRED," AND NOW THEY'RE AGREEING, "WELL, WE WANT TO COME IN," AND TO SAY "NO, YOU CAN'T." IT JUST SEEMS COUNTERINTUITIVE TO THE COURT.

I WOULD AGREE WITH YOU THAT THE INTERVENTION, FOR PURPOSES OF NOW REOPENING THE LITIGATION AND TREATING IT AS A PRE-JUDGMENT LITIGATION AND NOW SERVING COMPLAINTS AND GETTING ANSWERS AND TAKING DISCOVERY AND ALL OF THOSE MATTERS, THAT WOULD BE A DIFFERENT KIND OF INTERVENTION.

AND THAT'S WHY I INVITE THE PARTIES TO ADDRESS THE COURT ON THE NATURE OF A LIMITED INTERVENTION. IT'S -- I'VE SEEN CASES THAT RECOGNIZE IT. IT'S JUST NOT ONE OF THOSE THINGS WHERE THE PROCEDURAL BOOKS TALK A LOT ABOUT IT.

BUT IT SEEMS TO ME THAT THERE ARE POST-JUDGMENT PROCEEDINGS THAT WILL NOW TAKE PLACE, SUCH AS THE MOTION TO ENFORCE THE JUDGMENT OR THE MOTION TO STAY EXCUSE, I'VE HEARD OF AN APPEAL FOR WHICH THESE INDIVIDUALS, ONCE THEY'RE IN THE CASE, CAN BE MADE THE SUBJECT OF ORDERS.

AND RATHER THAN GET AN ORDER AND THEN LATER BRING THEM INTO THE CASE, IT SEEMS TO ME A MORE EFFICIENT WAY IS TO BRING THEM IN NOW.

IF I'M WRONG AND THE JUDGMENT IS SET ASIDE AND THE CASE IS BROUGHT BACK, THEY'RE IN THE

CASE FOR PURPOSES OF NOW TRYING TO FIGURE OUT WHAT IS THE NATURE OF THIS LITIGATION.

THIS WAS A SETTLEMENT OF AN ONGOING LITIGATION.

AND SO ONCE THEY INTERVENE, THEY'RE INTERVENING IN THE ONGOING LITIGATION.

IF THE ARGUMENT IS THEY HAVE NO PLACE IN THE ONGOING LITIGATION, THAT WHATEVER THEY'RE CONTENDING ABOUT IS NOT SOMETHING THAT WAS THE SUBJECT MATTER OF THE LITIGATION, I'M WILLING TO LISTEN TO THAT.

BUT IT SEEMS TO ME THAT THEY'RE -- IF I ALLOW THEM TO INTERVENE FOR PURPOSES OF A JUDGMENT AND AN APPEAL FROM A JUDGMENT THAT FORCES THEM TO TAKE ACTION THAT THEY'VE AGREED TO, THAT SEEMS TO ME TO BE A LOGICAL THING TO ALLOW.

MR. CHATTERJEE: OKAY. YOUR HONOR, THANK YOU.

I THINK THERE WERE A COUPLE CONCEPTS IN THERE THAT ARE VERY IMPORTANT AND THAT MAYBE THERE ARE SOME SUBTLETIES THAT WE HAVE NOT YET TALKED ABOUT.

I UNDERSTAND WHERE YOU'RE GOING, BUT I THINK THERE ARE A COUPLE OF IMPORTANT THINGS.

THE FIRST THING IS I BELIEVE YOUR HONOR

IS GOING TO BE AFFIRMED AT THE NINTH CIRCUIT. I THINK IT WAS A SOUND DECISION BASED UPON NINTH CIRCUIT LAW.

IN THE UNLIKELY EVENT THAT THERE WERE A REVERSAL, I WOULD NOT WANT THIS INTERVENTION TO ALLOW THEM TO GET OUT OF THE CASE IN CALIFORNIA AGAIN.

THE COURT: TO GET OUT?

MR. CHATTERJEE: TO GET OUT, BECAUSE YOUR HONOR SAID YOU WERE ONLY ALLOWING THEM A LIMITED INTERVENTION. IF THEY'RE IN, THE CONSEQUENCES FOR THAT SHOULD BE WHATEVER HAPPENS.

THE COURT: OH, YES. MY ORDER WOULD BE TO INTERVENE FOR PURPOSES OF POST-JUDGMENT AND APPEAL, SO THAT ONCE THEY'RE IN FOR PURPOSES OF POST-JUDGMENT, I WOULD REGARD ANY CASE THAT WAS BROUGHT BACK ON REMAND AS POST-JUDGMENT AND, THEREFORE, THEY WOULD BE IN FOR PURPOSES OF THOSE PROCEEDINGS.

MR. CHATTERJEE: THANK YOU, YOUR HONOR.

THE SECOND ISSUE IS I DO THINK THIS ISSUE HAS TO BE DEALT WITH ON THEIR STRATEGIC DECISION NOT TO OPPOSE THE MOTION BEFORE YOUR HONOR.

IF YOU'RE ALLOWING THEM TO INTERVENE, WHATEVER RIGHTS THEY HAVE AT THIS POINT IN TIME,

17:07:38 HAVING CHOSEN NOT TO OPPOSE THE MOTION, IS WHAT
17:07:41 THEY HAVE. THEY CAN'T ALL OF A SUDDEN COME IN AND
17:07:43 STEP INTO THE SHOES OF CONNECTU.
17:07:46 THE COURT: I'M SORRY. SAY MORE ABOUT
17:07:47 THAT. WHAT MOTION?
17:07:48 MR. CHATTERJEE: YOUR HONOR, WHEN WE
17:07:51 FILED THE MOTION TO ENFORCE --
17:07:52 THE COURT: YES.
17:07:53 MR. CHATTERJEE: -- THE CONNECTU
17:07:55 SHAREHOLDERS, I'LL CALL THEM THE CONNECTU FOUNDERS,
17:07:58 DIVYA NARENDRA, CAMERON WINKLEVOSS, AND TYLER
17:08:03 WINKLEVOSS SUBMITTED DECLARATIONS, SOME OF THEM
17:08:05 SUBMITTED DECLARATIONS ON BEHALF OF CONNECTU.
17:08:07 BUT THEY MADE THE CHOICE NOT TO INTERVENE
17:08:10 THEN. THEY MADE THE CHOICE NOT TO BE PARTIES IN
17:08:12 OPPOSITION TO THAT ENFORCEMENT ACTION.
17:08:15 IF THEY DECIDE THEY WANT TO INTERVENE
17:08:18 NOW, AFTER JUDGMENT'S ENTERED, THEY SHOULD NOT BE
17:08:21 ABLE TO STEP INTO THE SHOES OF CONNECTU ON APPEAL.
17:08:24 WHATEVER RIGHTS THEY HAVE, HAVING MADE
17:08:25 THE DECISION NOT TO PARTICIPATE IN THE OPPOSITION
17:08:28 OF THE MOTION, THEY SHOULD BE STUCK WITH THE
17:08:30 CONSEQUENCES OF THAT GIVEN THEIR STRATEGIC CHOICE.
17:08:34 THE COURT: I'M STILL NOT UNDERSTANDING.
17:08:36 THE MOTION TO ENFORCE THE JUDGMENT IS THE MOTION

THAT ENDED IN A JUDGMENT.

MR. CHATTERJEE: CORRECT.

THE COURT: AND NOW THERE IS AN APPEAL.

I PRESUME THAT, IN THAT APPEAL, CONNECTU, THROUGH ITS OFFICERS OR AUTHORIZED REPRESENTATIVES, TAKES THE POSITION THAT THE JUDGMENT SHOULD BE SET ASIDE.

MR. CHATTERJEE: CORRECT, YOUR HONOR.

AND LET ME JUST --

THE COURT: AND THESE INDIVIDUALS WOULD BE TAKING A CONSISTENT POSITION.

MR. CHATTERJEE: YES, YOUR HONOR.

HOWEVER, DEPENDING ON WHAT HAPPENS WITH CONNECTU -- I DON'T KNOW EXACTLY WHAT'S GOING TO HAPPEN WITH THAT, BUT ON APPEAL, IF THE INDIVIDUALS ARE THE ONLY PEOPLE LEFT -- SO, FOR EXAMPLE, THE CONCERN THAT MR. O'SHEA HAS, IF FACEBOOK BECOMES THE OWNER OF CONNECTU, IF IT MAKES THE DECISION THAT IT'S NOT IN THE BUSINESS'S INTEREST TO CONTINUE THE APPEAL, THEN THE INDIVIDUALS SHOULD NOT BE ABLE TO ASSUME THE RIGHTS OF CONNECTU BECAUSE THEY MADE THE DECISION NOT TO OPPOSE THE MOTION.

THE COURT: AH, OKAY, YES. I HAVEN'T QUITE FIGURED OUT ALL OF THE NUANCES OF THAT

PROBLEM, BUT I DID GET A LITTLE BIT OF IT.

ONE OF THE CONCERNS IS IF THE -- IF FACEBOOK PROCEEDS TO ACQUIRE, THROUGH EXECUTION ON THE JUDGMENT OR ENFORCEMENT OF THE JUDGMENT, THE SHARES OF CONNECTU, WOULD THESE INDIVIDUALS, IN SOME CAPACITY, BE ABLE TO PROCEED IF CONNECTU DOESN'T WANT TO PROCEED?

MR. CHATTERJEE: CORRECT, AND WHAT RIGHTS WOULD THEY HAVE.

THEY MAY BE ABLE TO PROCEED IN ANY EVENT, BUT THEIR RIGHTS MAY BE DIFFERENT THAN THE RIGHTS OF CONNECTU BECAUSE CONNECTU MADE THE DECISION TO OPPOSE.

THE COURT: WELL, CAN I DEFER THAT UNTIL I LEARN MORE ABOUT THIS QUESTION ON, ON ENFORCING, ON STAYING THE JUDGMENT?

BECAUSE IT DOES SEEM TO ME THAT WHETHER ACTION IS STAYED PENDING APPEAL AND HOW THAT IS DONE IS NOW TIED IN WITH THE POWER THAT FACEBOOK WOULD SEEK TO EXERCISE SHOULD IT BECOME, AS A RESULT OF THIS PROCESS, THE OWNER OF CONNECTU.

AND WHAT YOU'RE ASKING THE COURT FOR IS SOME RULING WITH RESPECT TO THE RIGHTS OF THOSE INDIVIDUALS ONCE THAT -- IF THAT SHOULD HAPPEN.

AND I DON'T HAVE AN ANSWER TO THAT.

MR. CHATTERJEE: IT REALLY GOES TO THE SCOPE OF THE INTERVENTION, YOUR HONOR, BECAUSE YOU HAD STARTED BY SAYING IT'S A LIMITED INTERVENTION.

THE COURT: WELL, LET ME SEE IF I CAN ANSWER THAT TO SEE IF THEY ARE -- MY UNDERSTANDING IS THAT THEY ARE SEEKING TO INTERVENE AS INDIVIDUALS AND IN THEIR INDIVIDUAL CAPACITY. THEY'RE NOT SEEKING TO INTERVENE AS REPRESENTATIVE OF CONNECTU OR ON BEHALF OF CONNECTU.

AND MY RULING ALLOWING THEM TO INTERVENE WOULD BE TO INTERVENE AS INDIVIDUALS IN THEIR INDIVIDUAL CAPACITY.

DOES THAT HELP?

MR. CHATTERJEE: I DON'T KNOW IF IT RESOLVES THE QUESTION I WAS ASKING. IF -- BECAUSE IT SOUNDS LIKE THE INTERVENTION IS, IS FOR ANYTHING POST-JUDGMENT THAT OCCURS.

THE COURT: RIGHT.

MR. CHATTERJEE: AND THEN --

THE COURT: BUT IN THEIR INDIVIDUAL CAPACITY.

IN OTHER WORDS, ONCE THEY'RE IN THE CASE, THEY WOULD NOT BE ABLE TO SAY, "I AM NOW SPEAKING ON BEHALF OF CONNECTU AND, THEREFORE, I TAKE THIS POSITION ON, THIS POSITION ON BEHALF OF CONNECTU."

MR. CHATTERJEE: RIGHT. AND, YOUR HONOR, PERHAPS IF THAT'S YOUR HONOR'S RULING, WE WOULD LIKE GUIDANCE AS FAR AS WHAT IS IT THAT THEY'RE ALLOWED TO INTERVENE ON?

HOWEVER, IF YOU THINK THAT'S AN ISSUE THAT'S LEFT BETTER FOR A LATER DAY OR IN FRONT OF THE NINTH CIRCUIT, WE CAN DEAL WITH THAT THERE.

THE COURT: WELL, LET ME HEAR FROM MR. O'SHEA AGAIN, OR PERHAPS MR. UNDERHILL WOULD WANT TO SPEAK TO THIS.

BUT IT DOES SEEM TO ME THAT I UNDERSTAND THEIR DESIRE TO INTERVENE IN THEIR INDIVIDUAL CAPACITIES AND TO TAKE WHATEVER ACTIONS POST-JUDGMENT THAT THEY MIGHT TAKE IN THEIR INDIVIDUAL CAPACITIES.

MR. O'SHEA: I THINK THAT'S RIGHT, YOUR HONOR. I THINK WHAT MR. CHATTERJEE IS TRYING TO DO IS ESSENTIALLY TRICK -- IS GIVE WITH ONE HAND AND TAKE AWAY WITH THE OTHER.

YOU SEE, YOUR HONOR, THE REASON WHY WE'RE SEEKING TO INTERVENE IS TO VINDICATE OUR RIGHTS.

PRIOR TO TODAY, WE WERE SATISFIED WITH CONNECTU'S VINDICATING OUR RIGHTS, IF YOU WILL. BUT -- AND SO WE WERE CONTENT TO SIT ON THE SIDES.

IT'S ONLY BECAUSE OF FACEBOOK'S ATTEMPT

TO DEPRIVE US OF OUR RIGHTS TO CHALLENGE THE ENFORCEMENT OF THE TERM SHEET THAT WE'RE HERE.

IF -- IF WHAT MR. CHATTERJEE IS SAYING IS, WELL, YOU CAN GO AHEAD AND ALLOW INTERVENTION, BUT THEY'RE -- THEY CAN'T CHALLENGE THE TERM SHEET BECAUSE THEY DIDN'T CHALLENGE IT BACK THEN WHEN CONNECTU WAS CHALLENGING ON THEIR BEHALF, THAT'S NONSENSE, JUDGE.

IT'S ALLOWING INTERVENTION.

AND I CHALLENGE MR. CHATTERJEE TO COME UP WITH ONE CASE WHERE A COURT ALLOWED INTERVENTION BY, BY AN INTERVENING PARTY TO PRESERVE AN APPEAL, FOR EXAMPLE, UNITED AIRLINES, FOR EXAMPLE, PELLEGRINO VERSUS NESBIT, WHERE THE COURT SAID, "WE'RE ALLOWING YOU TO INTERVENE, BUT WE'RE GOING TO CIRCUMSCRIBE THOSE RIGHTS TO INTERVENE."

I THINK WHAT YOUR HONOR INITIALLY SAID WAS ABSOLUTELY CORRECT. WE SHOULD BE ALLOWED TO INTERVENE POST-JUDGMENT, TO CHALLENGE THIS COURT'S -- TO RESPECTFULLY CHALLENGE THIS COURT'S DECISION THEN POST-JUDGMENT.

WE'RE NOT, FOR EXAMPLE, SEEKING TO REOPEN AND RELITIGATE THE MATTER BEFORE THE COURT.

I THINK WHAT MR. CHATTERJEE IS DOING IS CLEVER, BUT IT'S A TRICK, AND WHAT IT'S TRYING TO

DO IS GET THIS COURT TO DO SOMETHING THAT WOULD CIRCUMSCRIBE OUR RIGHTS OF APPEAL, WHICH IS THE PRECISE REASON WHY WE'RE HERE, YOUR HONOR.

THE COURT: IS IT TRUE THAT YOU WANT TO CIRCUMSCRIBE HIS RIGHTS ON APPEAL?

MR. CHATTERJEE: OF COURSE, YOUR HONOR.

THE COURT: WHAT IS IT THAT YOU WOULD WISH TO HAVE THE COURT CIRCUMSCRIBE WITH RESPECT TO HIS APPEAL?

MR. CHATTERJEE: WE DON'T WANT THE INDIVIDUALS TO HAVE THE RIGHT TO SEEK AN APPEAL.

IT'S NOT SIMPLE. THEY MADE THE CHOICE NOT TO PARTICIPATE IN THE PROCEEDING, AND WE SHOULDN'T BE PREJUDICED BY HAVING TO DEAL WITH THAT NOW.

MR. BARRETT STOOD UP AT THE HEARING --

THE COURT: ISN'T THAT TANTAMOUNT TO DENYING THEM THE RIGHT TO INTERVENE? BECAUSE IF I ALLOW THEM TO INTERVENE, IT SEEMS TO ME THAT, AS PARTIES NOW, THEY WOULD HAVE THE RIGHT TO APPEAL.

SO THAT GOES BACK TO -- YOUR ARGUMENT IS I SHOULDN'T ALLOW THEM TO INTERVENE, BECAUSE IF I GIVE THAT RIGHT, THEY WOULD BE PERMITTED AS PARTIES NOW, IF THEY ARE AFFECTED ADVERSELY BY THE JUDGMENT, TO APPEAL.

MR. CHATTERJEE: CORRECT, YOUR HONOR. THAT'S THE ISSUE.

AND THERE'S NO TRICK HERE. WE FILED A MOTION TO ENFORCE. WE FILED THE MOTION TO ENFORCE. WE SERVED IT IN BOSTON. THE INDIVIDUALS HAD HAD NOTICE AND THEY DECIDED NOT TO COME IN. THEY MADE A STRATEGIC DECISION ON THAT.

THERE'S NO TRICK. THEY KNEW THAT THIS WAS COMING AND WE WERE GOING TO TRY AND TAKE CONNECTU AS A COMPANY. THEY MADE THE DECISION NOT TO GET INVOLVED.

YOUR HONOR, I -- I DON'T KNOW WHY MR. O'SHEA IS SO INFLAMED. THEY HAD NOTICE OF IT. COUNSEL FOR THE WINKLEVOSS BROTHERS AND NARENDRA STOOD UP AT THE MOTION TO ENFORCE HEARING AND ARGUED TO YOUR HONOR -- IN BOSTON, THEY HAD A SEPARATE PROCEEDING WHERE DIVYA NARENDRA AND HOWARD WINKLEVOSS WERE THERE.

THEY CAN'T COME IN NOW AND SAY THIS IS A TIMELY APPLICATION. THEY MADE A STRATEGIC DECISION NOT TO GET INVOLVED AND THEY SHOULD HAVE TO DEAL WITH THE CONSEQUENCES OF THAT BECAUSE THEY KNEW WHAT THEY WERE DOING.

THE COURT: ALL RIGHT. NOW, LET ME HOLD THIS IN ABEYANCE. I'M NOT SURE THAT THIS IS THE

TIME ON THE FIRST MOTION OR ALL MOTIONS.

I DO HAVE A CONCERN THAT MY STAFF -- I GAVE THEM A PROMISE WE'D ONLY KEEP THIS TO ABOUT AN HOUR, SO CAN I TURN QUICKLY NOW TO THE OTHER MATTER, KEEPING THIS AS SOMETHING THAT I HAVE UNDER CONSIDERATION, AND THAT IS THIS MOTION TO STAY EXECUTION OF THE JUDGMENT.

THIS IS YOUR MOTION, MR. UNDERHILL?

MR. UNDERHILL: YES, YOUR HONOR. I'D LIKE TO RESERVE THREE MINUTES, PLEASE.

AND, AGAIN, YOUR HONOR, I'VE GOT A LOT OF GROUND TO COVER. IF THERE ARE SPECIFIC ISSUES THAT YOU WANT ME TO ADDRESS, PLEASE DIRECT ME.

THE COURT: WELL, I THINK EVERY -- LET ME COMMENT ON THAT THE WAY I DID THE OTHER ONE.

MR. UNDERHILL: SURE.

THE COURT: I THINK, FROM WHAT I CAN SEE, EVERYBODY IS ON ALL FOURS THAT THIS IS NOT A SIMPLE SITUATION THAT WOULD BE RESOLVABLE AS IT WOULD IF I HAD A MONEY JUDGMENT AND YOU COULD POST A BOND.

THIS IS A SITUATION WHICH IS TANTAMOUNT TO A SPECIFIC PERFORMANCE OR INJUNCTIVE RELIEF CIRCUMSTANCE WHERE THE STAY HAS TO BE ADDRESSED AS, AS YOU WOULD IF THERE WERE INDIVIDUAL ACTS THAT HAVE TO -- THAT ARE AFFECTED BY IT.

AND IT DOES SEEM TO ME THAT, AS THE COURT THAT ISSUED THE JUDGMENT, I HAVE TO PAY ATTENTION TO THE FACT THAT THE VALUE OF THIS JUDGMENT TO BOTH PARTIES, AS I SAW IT, WAS A TIMELY COMBINATION OF EXCHANGE OF CASH AND STOCK, AND THAT IT SEEMED TO ME THAT THE PARTIES WERE, WERE -- ARE AFFECTED BY A DELAY WHICH MIGHT AFFECT THE VALUE OF THE CONSIDERATION.

AND SO IF THE PARTY IS -- IF ONE PARTY TO THIS IS NOW DISAPPOINTED AND WISHES TO APPEAL, IT'S GOING TO AFFECT THE TIMELINESS AND THE VALUE OF THE CONSIDERATION WITH RESPECT TO THE OTHER PARTY.

AND THAT COULD BE SAID, AT THIS POINT, BY EITHER PARTY. EITHER ONE COULD HAVE SAID, "NO, THIS ISN'T RIGHT, I DON'T WANT TO GO AHEAD."

AND SO TO STAY EXECUTION IS, IS SOMETHING WHICH SAYS, "WE WANT YOU TO CHANGE THE VALUE OF THE CONSIDERATION THAT WAS GOING ON AT THE POINT OF THE SETTLEMENT, AND WE NEED TO HAVE YOU IGNORE THE PARTIES' DETERMINATIONS OF THOSE VALUES AT THE TIME," AND ALLOW THAT TO CHANGE AT, AT THE RISK THAT IT WILL DO VIOLENCE TO THE VERY DEAL THAT THE PARTIES PUT TOGETHER FOR A HIGHER GOOD, WHICH IS TO SEE WHETHER OR NOT THERE REALLY WAS A SETTLEMENT.

SO THAT'S KIND OF HOW I'M APPROACHING IT.

MR. UNDERHILL: OKAY. LET ME TRY TO JUMP, I GUESS, THEN, TO THIS IDEA OF FACEBOOK'S INTEREST IN CONNECTU PENDING THE APPEAL.

FIRST OF ALL, YOUR HONOR, I BELIEVE IT TO VERY MUCH BE THE CASE THAT THE VALUE THAT CHANGED HANDS HERE WITH RESPECT TO, FROM THE FACEBOOK SIDE TO THE CONNECTU SIDE, WAS SETTLEMENT OF AN EXTREMELY VALUABLE CLAIM.

CONNECTU ITSELF, THE BUSINESS, IS EXTREMELY SMALL. IT GETS ABOUT 100 HITS A MONTH. IT PRODUCES ABSOLUTELY NO REVENUE OF ANY KIND. NEVER HAS.

SO THE IDEA OF EXCHANGING THE STOCK WAS AN ELEGANT -- IN RETROSPECT, NOT SO ELEGANT -- WAY OF SETTLING THE LAWSUIT.

WE ARE MORE THAN HAPPY TO DO AN EXPEDITED APPEAL. WE HAVE SUBMITTED PAPERS TO THE COURT WITH RESPECT TO THE RELEASE ISSUE WHERE WE SAY WE'RE WILLING TO DO AN EXPEDITED APPEAL.

THAT LANGUAGE WAS NOT ACCEPTABLE TO FACEBOOK.

AND IT IS CLEAR TO US, YOUR HONOR, THAT AT EVERY TURN, EVERYTHING POST-JUDGMENT, WHICH OBVIOUSLY WE RESPECTFULLY DISAGREE WITH, EVERYTHING THAT THE OTHER SIDE HAS DONE IS DESIGNED TO KEEP US

FROM HAVING A MEANINGFUL APPEAL.

AND SO THERE IS THIS THREAT THAT IF THEY CAN GET THEIR HANDS ON CONNECTU, THEY'RE GOING TO SHUT DOWN THE APPEAL.

WE -- WE ALSO BELIEVE WE HAVE A MALPRACTICE CLAIM AGAINST PRIOR COUNSEL.

THERE AT LEASE IMPLICITLY, IF NOT EXPRESSLY, IS THE IDEA THAT THEY MAY SHUT THAT DOWN, TOO, AND EXPOSE THE INDIVIDUAL SHAREHOLDERS TO LIABILITIES THAT THEY MIGHT NOT OTHERWISE HAVE, IF FACEBOOK IS ABLE TO DO THAT.

SO WE'RE HERE, YOUR HONOR, TO BE THE MOST REASONABLE THAT WE POSSIBLY CAN AND FIGURE OUT SOME WAY TO GET AN APPEAL THAT IS PRACTICAL.

AND, YOU KNOW, POSTING A BOND OF TENS OF MILLIONS OF DOLLARS IS SIMPLY NOT PRACTICAL TO HAVE THE APPELLATE COURT HEAR WHAT I TRULY BELIEVE ARE SOME PRETTY NOVEL IDEAS, AND I DO WANT TO SPEND JUST A COUPLE OF MINUTES ON THE LAW HERE IN A MINUTE.

BUT WE'RE WILLING TO DO ANYTHING REASONABLE. WE'RE WILLING TO TURN THE COMPANY OVER TO MR. FISHER. MR. FISHER CAN MAKE ANY OPERATIONAL DECISIONS, NOT THAT THERE ARE ANY OPERATIONAL DECISIONS.

WHAT GOES ON NOW IS THERE'S A CHECK THAT'S WRITTEN EVERY MONTH FOR THE RENTAL OF THE SERVER. THAT'S IT. WE'LL WRITE THE CHECK. HE DOESN'T EVEN HAVE TO WORRY ABOUT THAT.

WE WILL NOT MAKE A SINGLE OPERATIONAL CHANGE IN THE SLIGHTEST. YOU KNOW, WE'LL PUT IT OUT OF OUR HANDS.

IN FACT, YOUR HONOR, WE WOULD EVEN BE WILLING TO LET CONNECTU OPERATE THE BUSINESS.

NOW, THAT'S VERY DISTINCT, BY THE WAY, FROM HAVING THE COMPANY. WE DON'T AGREE THAT THEY CAN HAVE --

THE COURT: FACEBOOK.

MR. UNDERHILL: I'M SORRY?

THE COURT: YOU SAID CONNECTU.

MR. UNDERHILL: I'M SORRY.

THE COURT: YOU MEAN FACEBOOK.

MR. UNDERHILL: MY MISTAKE. I MEANT TO SAY FACEBOOK.

OBVIOUSLY WE WILL NOT VOLUNTARILY PERMIT THEM TO TAKE OVER OUR APPEAL BECAUSE WE DON'T THINK THEY WOULD DO AS GOOD A JOB AS WE WILL.

WE'RE NOT GOING TO LET THEM TAKE OVER THE MALPRACTICE CASE.

BUT IF THEY REALLY JUST WANT TO OPERATE

THIS THING, IF THEY WANT TO WRITE THE CHECK TO THE SERVER, YOU KNOW, ONCE A MONTH, IF THEY WANT TO REWRITE THE CODE, IF THEY WANT TO START ADVERTISING, THEY CAN DO WHATEVER THEY WANT WITH IT, IT'S THEIRS, AS LONG AS WE CAN KEEP OWNERSHIP OF CONNECTU SUFFICIENT TO SATISFY AN APPEAL.

NOW, WHAT WE HEARD IN THE PRIOR MOTION IS ONE MORE GAMUT TO TRY TO DENY US AN APPEAL.

AS MUCH AS MR. CHATTERJEE EXPRESSES CONFIDENCE IN THE COURT'S OPINION, HE SURE IS TRYING AWFULLY HARD TO KEEP THE NINTH CIRCUIT FROM EVER HEARING THESE ISSUES.

THE COURT: LET ME ASK THIS, COUNSEL.

MR. UNDERHILL: YES, YOUR HONOR.

THE COURT: IF I GO ALONG WITH THIS PROPOSAL -- I'M NOT SAYING I WILL -- AND THERE IS AN APPEAL THAT IS PURSUED INDEPENDENT OF CONNECTU, WHO PAYS FOR THE COST OF THE APPEAL?

MR. UNDERHILL: WE'LL TAKE CARE OF THAT, YOUR HONOR. NO PROBLEM.

THE COURT: WHO'S "WE"?

MR. UNDERHILL: IT WON'T BE CONNECTU. I'LL WORK IT OUT WITH THE SHAREHOLDERS.

THE COURT: AH. I SEE.

AND SO YOU'RE REQUESTING, ESSENTIALLY, TO

BE ABLE TO UNDO THE SETTLEMENT, BUT TO ALLOW THEM TO OPERATE THE COMPANY.

NOW, WHEN THE SETTLEMENT IS UNDONE, IF IT IS UNDONE BY A REVERSAL, YOUR UNDERSTANDING IS YOU'D GO BACK TO THE STATUS QUO ANTE, WHICH MEANS THAT THE COMPANY WOULD BE GIVEN BACK AND RESTART ALL THE LITIGATION?

MR. UNDERHILL: RIGHT. AND, AND FACEBOOK WOULD NEED TO KEEP IT SO THEY COULD GIVE IT BACK, YOU KNOW, AT THE END.

THE -- IF WE NEED A HEARING, YOUR HONOR, ON THE VALUE OF CONNECTU AND IS THIS AT ALL HARMING, THAT SEEMS LIKE AN AWFUL BIG WASTE OF TIME.

I MEAN, WHAT THIS CASE WAS ABOUT, AGAIN, WAS SETTLING AN EXTREMELY VALUABLE CLAIM.

NOW, I WOULD LIKE TO SAY, YOUR HONOR, THAT THE QUESTIONS THAT WE'RE GOING TO BE PRESENTING TO THE NINTH CIRCUIT -- AND BY THE WAY, I APOLOGIZE, YOUR HONOR. IT'S AWKWARD FOR ME. I'M USED TO TELLING THE APPELLATE COURT WHY THE DISTRICT COURT IS WRONG. IT'S NOT EVERY DAY WHEN I TELL THE DISTRICT COURT WHY I THINK THE DISTRICT COURT IS WRONG.

BUT I THINK THERE ARE DIFFICULT ISSUES

HERE WHICH, YOUR HONOR, I THINK THE LAW IS ON OUR SIDE.

I MEAN, ONE OF THE THINGS THAT YOUR HONOR SAID, I BELIEVE, OR AT LEAST HAS BEEN ARGUED, WAS THAT THERE WAS NO RELIANCE, YOU KNOW, FOR THE FRAUD THEORY.

WELL, YOUR HONOR, EVERY SINGLE CASE THAT WE'VE BEEN ABLE TO FIND UNDER 29(B) SAYS RELIANCE IS JUST NOT AN ISSUE. IT SAYS THAT YOU CAN VOID A CONTRACT IF THERE IS A VIOLATION OF THE SECURITIES LAWS.

NOW, FACEBOOK MAKES A BIG DEAL OUT OF SAYING, OH, BUT YOU'RE SUPPOSED TO LOOK AT THE CONTRACT, NOT THE TRANSACTION.

I DON'T EVEN UNDERSTAND THE ARGUMENT.

THE COURT: COUNSEL, I'M NOT -- I'M NOT GOING TO ENTERTAIN AN ARGUMENT ABOUT THE ISSUES THAT ARE ON APPEAL. THERE'S A STAY.

NOW, LET ME ASK THIS, THOUGH.

MR. UNDERHILL: YES, YOUR HONOR.

THE COURT: IT DOES SEEM TO ME THAT THE REASON THIS SETTLEMENT WAS PUT TOGETHER WAS TO -- WAS FOR BOTH SIDES TO BUY THEIR PEACE FROM LITIGATION.

HOW DO I -- HOW DO I NOT DO VIOLENCE TO

THAT AND, AT THE SAME TIME, DO WHAT YOU'RE ASKING ME TO DO?

IN OTHER WORDS, ESSENTIALLY WOULDN'T I BE UNDOING THE SETTLEMENT TO SAY, BY THE VERY NATURE OF THIS ORDER, OKAY, NO, THE LITIGATION -- THE SETTLEMENT MEANT NOTHING IN TERMS OF RELEASES. GO AHEAD NOW AND GO OUT THERE AND CONTINUE TO, TO LITIGATE.

ESSENTIALLY FACEBOOK WAS SAYING, "FOR THIS CONSIDERATION, WE AGREE TO RESOLVE ALL LITIGATION. THERE WILL BE NO MORE LITIGATION."

HOW DO I ENFORCE THAT?

MR. UNDERHILL: RIGHT.

YOUR HONOR, I THINK THERE HAS TO BE SOME BALANCE HERE. I MEAN, IT IS ABSOLUTELY TRUE THAT WHEN PEOPLE WORK OUT A SETTLEMENT AND THEY HAVE SOME KIND OF A SIGNED DOCUMENT, YOU KNOW, THEY THINK THEY HAVE A SETTLEMENT.

BUT THE CASES ARE LEGION THAT SOMETIMES THEY MAY THINK IT'S A SETTLEMENT AGREEMENT, BUT IT'S NOT, AND IT GETS BLOWN UP.

AND PEOPLE NEED TO HAVE THE OPPORTUNITY TO BE ABLE TO LITIGATE IT WHEN THEY HAVE FRAUD CLAIMS, OR WHEN THERE'S AN ALLEGATION THAT THE TERMS ARE INSUFFICIENTLY VAGUE TO BE ENFORCED, AND

WE HAVE ADMISSIONS FROM FACEBOOK REFERRING TO IT AS A TENTATIVE AGREEMENT. THEY'RE IN WRITING ON THAT. THAT'S PART OF THE RECORD, YOUR HONOR.

AND SO THERE HAS TO BE SOME OPPORTUNITY FOR SOMEONE TO CHALLENGE THAT AND, YOU KNOW, WE HAD AN OPPORTUNITY WITH THE DISTRICT COURT.

BUT RESPECTFULLY, YOUR HONOR, I THINK THE OPPORTUNITY TO CHALLENGE A SETTLEMENT AGREEMENT ALSO INCLUDES THE RIGHT TO HAVE ANOTHER COURT LOOK AT IT --

THE COURT: I AGREE WITH YOU.

MR. UNDERHILL: -- AND DETERMINE IF THAT WAS RIGHT.

THE COURT: LET ME INTERRUPT YOUR ARGUMENT --

MR. UNDERHILL: SURE.

THE COURT: -- JUST IN VIEW OF THE TIME.

I KNOW THAT THERE'S A LOT MORE TO BE SAID AND I'LL HEAR FROM YOUR OPPONENT.

HAVE YOU TRIED THIS IDEA ON THEM THAT YOU'VE JUST PUT TO THE COURT?

MR. UNDERHILL: I'VE TRIED VARIOUS IDEAS, YOUR HONOR, WITH MR. FISHER, YOU KNOW, INVOLVED, AND ALSO INDEPENDENTLY WITH MR. FISHER.

I'VE ATTEMPTED TO FLOAT THE IDEA THAT THE

SHARES WOULD BE TURNED OVER BUT WOULD BE KEPT WITH THE SPECIAL MASTER, WOULD NOT BE RELINQUISHED DURING THE APPEAL.

THAT WAS UNACCEPTABLE TO MR. CHATTERJEE.

I FLOATED THE IDEA THAT WE TURN OVER THE COMPANY AND THAT HE KEEP IT SEPARATE.

THAT WAS UNACCEPTABLE TO MR. CHATTERJEE.

I'VE -- I'VE FLOATED THE IDEA THAT HE WOULD AGREE NOT TO IMPAIR OUR APPELLATE RIGHTS AND NOT TO IMPAIR OUR ABILITY TO BRING A MALPRACTICE CLAIM.

THAT WAS UNACCEPTABLE TO MR. CHATTERJEE.

I MEAN, WHAT IT COMES DOWN TO -- AND I DON'T BLAME HIM TOO MUCH, HE'S A LAWYER, HE'S JUST TRYING TO WIN -- BUT HE'S GOT A DECISION THAT HE LIKES AND IF HE CAN FORECLOSE THE NINTH CIRCUIT LOOKING AT IT, OF COURSE HE'S GOING TO TRY TO DO THAT.

BUT I DON'T THINK IT'S FAIR HERE.

THE COURT: ALL RIGHT. LET ME HEAR --

MR. CHATTERJEE: YOUR HONOR, I'M JUST GOING TO START -- I'M NOT GOING TO SPEND A LOT OF TIME ON THIS.

FROM BOTH COUNSELS I'M GETTING A NUMBER OF PERSONAL ATTACKS HERE. I'M NOT GOING TO GO

THERE, BUT I DON'T APPRECIATE IT.

I JUST -- WE HAVE A CODE OF PROFESSIONALISM HERE AND I EXPECT PEOPLE TO FOLLOW IT AND I'D ASK YOUR HONOR TO REMIND PEOPLE OF THAT.

THE COURT: I DIDN'T HEAR THAT KIND OF ATTACK. I THINK THAT IT WAS RESPECTFUL, BUT IT IS RESPECTFUL TAKING ISSUE WITH YOUR POSITION, NOT WITH YOU AS A COUNSEL, WHICH I SHOULD INDICATE I HAVE A GREAT DEAL OF RESPECT FOR YOU AS A PERSON WHO'S APPEARED BEFORE ME, AND SO FAR I HAVE A GREAT DEAL OF RESPECT FOR ALL OF YOU WHO HAVE APPEARED.

SO GO AHEAD WITH THE SUBSTANCE OF YOUR ARGUMENT.

MR. CHATTERJEE: THANK YOU, YOUR HONOR. I APPRECIATE THAT.

THE SUBSTANCE OF THE ARGUMENT IS THIS: I THINK YOUR HONOR IS RIGHT. WE NEGOTIATED A DEAL ON FEBRUARY 22ND, AND THAT WAS A PEACE TREATY.

THERE WAS VALUE TO THE COMPANY THAT WE PURCHASED. IF WE DIDN'T WANT THE COMPANY, WE WOULD HAVE JUST SIGNED RELEASES.

BUT WE DIDN'T. WE PURCHASED THE COMPANY, AND THERE'S A VALUE TO THE PEACE THAT WE SIGNED.

THE INDIVIDUALS, AS I SAID BEFORE, CHOSE NOT TO OPPOSE THE MOTION TO ENFORCE. THE COMPANY

DID.

AND IF WE DIDN'T GET THE COMPANY THROUGH THE RELEASE OF SHARES AND THEY WERE ABLE TO PROCEED WITH MAJOR LITIGATION AGAINST THEIR FORMER LAW FIRM WHICH THEY, BY THE WAY, INITIATED AFTER YOUR JUDGMENT ENTERED, THEY INITIATED THE LAWSUIT IN THE NEW YORK SUPREME COURT AFTER YOUR JUDGMENT ENTERED.

AND THEY -- THE DISPUTE STARTED BEFORE, BUT THERE WAS AN ACTION IN THE NEW YORK SUPREME COURT AFTERWARDS.

THE MALPRACTICE CLAIM THAT THEY WANT TO INITIATE, I DON'T KNOW IF THEY HAVE YET OR NOT, I HAVEN'T SEEN ANYTHING INDICATING THAT THEY HAVE, ALL OF THOSE THINGS ARE DECISIONS THAT AFFECT THE VALUE OF THE COMPANY THAT WE PURCHASED.

AND FOR THEM TO COME IN HERE AND SAY, "OH, FACEBOOK CAN DO THE DAY-TO-DAY CONTROL, THEY CAN INVEST HEAVILY IN IT, THEY CAN BUILD A GREAT COMPANY IF THEY'RE ABLE TO DO IT AND MAKE A GREAT PROFIT OR DO SOMETHING TO MAKE THE COMPANY OPERATIONAL, BUT IF THE NINTH CIRCUIT REVERSES, THEN WE GET IT BACK AND WHATEVER THEY DID IS FOR NAUGHT AND WE DON'T HAVE TO WORRY ABOUT UNSCRAMBLING THAT EGG," AND IF YOUR HONOR HAS ALREADY ENTERED JUDGMENT SAYING THAT WE'RE RIGHT ON

THE ENFORCEMENT MOTION, FRANKLY, YOUR HONOR, IT'S SOMEWHAT ABSURD TO ARGUE THAT.

WE WANT THE VALUE OF WHAT WE PURCHASED, AND STAYING THE PROCEEDINGS IS, IS, IS TANTAMOUNT TO NOT RECOGNIZING THE SETTLEMENT AGREEMENT.

THERE'S A PUBLIC INTEREST HERE IN RECOGNIZING THESE AGREEMENTS THAT GETS IMPLICATED. YOUR HONOR RECITED THAT YOURSELF AT THE JUDGMENT HEARING.

THE ONE THING -- THE ONE OTHER POINT I WANT TO MAKE IS, CANDIDLY, WE HAVE A BIG ISSUE WITH THEM HAVING ANY DECISION MAKING OVER CONNECTU.

AND I'M NOT TALKING ABOUT THE LAWYERS. I'M TALKING ABOUT THE WINKLEVOSS BROTHERS AND DIVYA NARENDRA AND HOWARD WINKLEVOSS.

THEY INITIATED THE LITIGATION WITHOUT EVER CONSULTING ANYBODY AFTER THE JUDGMENT WAS ENTERED. THEY DON'T LIKE OUR COMPANY.

SO IF THINGS AREN'T GOING WELL IN THE NINTH CIRCUIT, THEY CAN DO WHATEVER THEY WANT.

THEY HAVE NOT PUT THE STOCK INTO GEORGE FISHER'S HANDS PER YOUR HONOR'S ORDER. THAT WAS DUE MONDAY, AND AT 2:15, GIVE OR TAKE A FEW MINUTES, ON MONDAY, AFTER WE HAD PUT ALL OF OUR CONSIDERATION IN, THAT SUBSTANTIAL AMOUNT OF MONEY

AND THE SUBSTANTIAL AMOUNT OF SHARES, THEY NOTIFIED US THAT THEY WERE GOING TO MAKE THE DECISION NOT TO SUBMIT IT TO HIM IN VIOLATION OF YOUR HONOR'S ORDER.

WHAT CONFIDENCE COULD WE POSSIBLY HAVE THAT THEY ARE GOING TO PROTECT THE VALUE OF THAT ASSET? IT'S SIMPLY NOT THERE. WE HAVE ZERO CONFIDENCE IN THEM.

THE COURT: WELL, HERE'S THE DILEMMA THAT I SEE. I CONTINUE TO BELIEVE THAT THE JUDGMENT WAS PROPERLY ENTERED HERE.

BUT I ALSO BELIEVE THAT ANY JUDGMENT IS APPEALABLE TO A HIGHER COURT, ANY JUDGMENT OF THIS COURT.

AND I'M IN A CIRCUMSTANCE WHERE IT'S NOT A MONEY JUDGMENT WHERE A BOND WOULD BE SUFFICIENT, SO THAT I'M TRYING TO WALK MY WAY THROUGH A PROCESS BY WHICH, EVEN IF I'M DISPOSED TO DENY THE STAY OF EXECUTION, I WON'T DENY THE RIGHT TO APPEAL.

SO IF I UNDERSTAND THAT THE EXECUTION COULD AMOUNT TO THE PLAINTIFF HERE TAKING THE UNUSUAL STEP OF SAYING, "WELL, NOW AS THE SHAREHOLDER, I TERMINATE THE APPEAL," THE EXECUTION WOULD BE, IN EFFECT, A PLACING OF THE RIGHT OF APPEAL, BUT DENYING THE RIGHT TO APPEAL. IT WOULD

TERMINATE BY THE EXECUTION.

I'VE NEVER FACED THAT SITUATION BEFORE, AND SO IT'S UNCHARTED WATER FOR ME.

AND SO THAT'S WHAT I NEED HELP WITH, BECAUSE UNLESS YOU CONVINCE ME THAT THERE SHOULD BE NO RIGHT TO APPEAL, I HAVE TO PUT THE OPPOSING PARTY TO MY JUDGMENT IN A POSITION SO THEY CAN CHALLENGE MY JUDGMENT.

MR. CHATTERJEE: SO, YOUR HONOR, I THINK WHAT YOU'RE IDENTIFYING IS, IS THE CONFLICT THAT WE HAVE HERE OF HARDSHIPS.

WE PURCHASED AN ASSET. WE WANT TO GET VALUE FOR THE ASSET.

AND WE ALSO SOUGHT PEACE, AND THERE'S A LOT OF HARDSHIP IN NOT ACKNOWLEDGING THAT PEACE.

THEIR PURPORTED HARDSHIP IS ESSENTIALLY THE RISK OF MOOTING AN APPEAL ON BEHALF OF CONNECTU.

IF YOU ALLOW INTERVENTION, YOUR HONOR, CANDIDLY, THAT MAY BECOME A NON-ISSUE DEPENDING ON WHATEVER RIGHTS THE INDIVIDUALS HAVE UPON INTERVENTION, BECAUSE AS YOUR HONOR NOTICED BEFORE, THEY ESSENTIALLY ARE ASSERTING THE SAME SORTS OF CLAIMS OF A THIRD PARTY COMPLAINANT.

NOW, WHEN YOU HAVE THESE TWO COMPETING

INTERESTS -- AND WE TALKED ABOUT THIS IN A FAIR AMOUNT OF DETAIL IN OUR PAPERS -- THE VALUE OF A STRATEGIC TRANSACTION, OR OF A CORPORATE TRANSACTION, IS SOMETHING THAT IS LIMITED IN TIME, AND THAT IS GIVEN A PRESUMPTION OF IRREPARABLE HARM.

THE MOOTNESS ON APPEAL ISSUE, THERE'S A SPLIT IN THE, IN THE COURTS OVER WHETHER THAT CONSTITUTES IRREPARABLE HARM OR NOT, BUT THE MAJORITY OF THE COURTS FIND THAT THAT ISN'T IRREPARABLE HARM.

AND, YOUR HONOR, AGAIN, THEY KNEW THIS COMING INTO THE MOTION TO ENFORCE HEARING WHEN THE INDIVIDUALS DIDN'T OPPOSE THAT WE WERE GOING TO ASK FOR THE COMPANY, BECAUSE THAT'S WHAT WE WERE ASKING FOR IN THE MOTION TO ENFORCE.

THE COURT: DO YOU SEE -- WELL, I -- I HEAR THAT AS MORE OF AN ARGUMENT TO DENY THE MOTION TO INTERVENE, AND THAT PART I UNDERSTAND YOUR POSITION ON. I'M NOT SURE I'LL GO ALONG WITH IT, BUT I UNDERSTAND IT.

BUT I DIDN'T HEAR YOU RESPOND TO MR. UNDERHILL'S CONCERN THAT IF I DON'T STAY ENFORCEMENT AND I ORDER ENFORCEMENT, AND NOT TO BE CONTEMPTUOUS OF THE COURT, THAT GO AHEAD AND COMPLY

AND TURN OVER THE SHARES AND THERE'S THIS EXCHANGE, THAT WOULD PUT FACEBOOK IN A POSITION WHERE IT COULD SAY, "AS CONNECTU, WE NOW DETERMINE TO ABANDON THE APPEAL," AND EFFECTIVELY DENY TO THAT LITIGANT THE RIGHT TO QUESTION MY JUDGMENT.

HOW DO YOU RESPOND TO THAT?

MR. CHATTERJEE: YOUR HONOR, I DON'T THINK THERE'S ANY -- I DON'T THINK MR. UNDERHILL'S MADE ANY SECRET ABOUT WHAT HE'S GOING TO DO IF YOU ORDER ENFORCEMENT OF THE ORDER YOU'RE ALREADY ENFORCING AND THEY HAVE TO HAND OVER THE SHARES OF THE COMPANY.

BY THE WAY, THEY'RE NOT EVEN IN GEORGE FISHER'S HANDS YET. THERE'S ANOTHER STEP WHERE HE HAS TO SEEK A COURT ORDER FROM YOU TO ALLOW RELEASE OF IT.

BUT LET'S ASSUME THAT THAT HAPPENED. I'M FAIRLY CERTAIN THAT MR. UNDERHILL IS GOING TO BE RUNNING TO THE NINTH CIRCUIT SEEKING A STAY OF EXECUTION OF THAT JUDGMENT AND SEEKING NINTH CIRCUIT INTERVENTION ON THAT.

AND SO, YOU KNOW, EITHER WAY IT'S GOING TO BE GOING TO THE NINTH CIRCUIT FOR RESOLUTION.

THE COURT: LET ME GO BACK TO YOU, MR. UNDERHILL, BECAUSE I EXPECTED THAT THAT WOULD

BE THE ANSWER, AND THAT IS THIS.

THIS IS SORT OF LIKE, AS I SAID, AN INJUNCTIVE RELIEF, WHICH MEANS THAT I HAVE TO BE CONVINCED TO STAY THIS, THAT THERE'S A LIKELIHOOD OF SUCCESS ON THE MERITS.

MR. UNDERHILL: RIGHT.

THE COURT: AND IF I AM CONFIDENT, AS I AM, IN MY JUDGMENT, WHAT WOULD BE THE BASIS FOR THIS COURT STAYING EXECUTION?

MR. UNDERHILL: RIGHT.

THE COURT: AS OPPOSED TO YOUR SEEKING SUCH A STAY FROM THE CIRCUIT, WHICH MIGHT TAKE A DIFFERENT VIEW OF THE LIKELIHOOD OF SUCCESS ON THE MERITS?

MR. UNDERHILL: YOUR HONOR, WITH THE COURT'S INDULGENCE, THEN, IN RESPONSE TO THAT QUESTION, I WOULD LIKE TO SPEND FIVE MINUTES ON THE LAW.

THE COURT: YOU'VE GOT FIVE MINUTES AND THEN I'M GOING TO BRING THIS TO A CLOSE VERY QUICKLY IN DEFERENCE TO THE PROMISE I MADE TO MY STAFF.

MR. UNDERHILL: SURE, YOUR HONOR.

IN ADDITION TO WEDDINGTON, WHICH WE BRIEFED AND I'M NOT GOING TO TALK ABOUT BECAUSE I'M

VERY MINDFUL WHAT OF YOU JUST SAID, I WOULD LIKE, YOUR HONOR, TO GIVE YOU TWO MORE CASES WHICH WE THINK FOLLOW THE SAME PROPOSITION.

ONE IS IN RE: IMPERIAL CREDIT INDUSTRIES, 527 F.3D 959, IT'S A NINTH CIRCUIT CASE; AND THE OTHER ONE IS WOLFE V. SUPERIOR COURT, 8 CALIFORNIA REPORTER 3D 649, AT PAGES 655 TO 656, AND THAT'S THE CALIFORNIA COURT OF APPEALS.

IN WOLFE, THE COURT SAID, "WE HOLD THAT IT IS REVERSIBLE ERROR FOR A TRIAL COURT TO REFUSE TO CONSIDER SUCH EXTRINSIC EVIDENCE ON THE BASIS OF THE TRIAL COURT'S OWN CONCLUSION THAT THE LANGUAGE OF THE CONTRACT APPEARS TO BE CLEAR AND UNAMBIGUOUS ON ITS FACE."

AND, YOUR HONOR, THAT'S WHAT WE THINK HAPPENED HERE. I THINK YOUR HONOR CONCLUDED THAT THE TERM SHEET WAS CLEAR AND UNAMBIGUOUS ON ITS FACE, DESPITE EVIDENCE THAT WE HAD SUBMITTED, INCLUDING THE EXPERT TESTIMONY OF DONNA HITSCHERICH THAT IT WAS INDEED UNCLEAR AS TO WHETHER IT WAS SUPPOSED TO BE A MERGER OR A STOCK PURCHASE.

INDEED, IN THEIR OWN FILING, IN THEIR ORIGINAL FILING WITH THE COURT WHERE THEY ASKED THE COURT TO ENFORCE IT, THEY VARIOUSLY IN THEIR DOCUMENTS REFERRED TO IT'S A MERGER OR A STOCK

PURCHASE.

WOLFE CLEARLY SAYS THAT YOU ARE ALLOWED TO LOOK, AND INDEED IN THIS CASE, THE COURT ERRED BY NOT LOOKING AT THE SUBSEQUENT EVENTS.

IN LOOKING AT THE NINTH CIRCUIT LAW THAT I JUST GAVE YOU, THE COURT SAID, "MUTUAL INTENT IS DETERMINED BY THE WORD 'USED' IN THE AGREEMENT, AS WELL AS EXTRINSIC EVIDENCE OF SUCH OBJECTIVE MATTERS AS THE SURROUNDING CIRCUMSTANCES UNDER WHICH THE PARTIES NEGOTIATED OR ENTERED INTO THE CONTRACT, THE OBJECT, NATURE, AND SUBJECT MATTER OF THE CONTRACT, AND THE SUBSEQUENT CONDUCT OF THE PARTIES."

SO, YOUR HONOR, WE BELIEVE THAT IT WAS ERROR, UNDER CLEAR NINTH CIRCUIT AND CALIFORNIA LAW, FOR THE COURT TO LOOK AT THE FOUR CORNERS AND SAY, "LOOK, IT'S CLEAR AND UNAMBIGUOUS TO ME. I'M GOING TO ENFORCE IT THIS WAY."

WITH RESPECT TO THE FRAUD CLAIM, YOUR HONOR, THE CASE LAW IS UNDISPUTED, AS LONG -- AS FAR AS WE KNOW.

WE FOUND TWO CASES, TWO APPELLATE CASES, THAT SAY NO RELIANCE IS REQUIRED UNDER 29(B) WHEN YOU'RE ALLEGING SECURITIES FRAUD.

NOW, THE COURT CITED THE PETRO-VENTURES

CASE. THAT SEEMS TO BE A VERY IMPORTANT CASE. I WOULD RESPECTFULLY ASK, YOUR HONOR, IF PERHAPS YOU'D TAKE ANOTHER LOOK AT IT. PETRO-VENTURES WAS A CASE WHERE A RELEASE WAS HELD TO BAR A SECURITIES FRAUD CLAIM.

WE HAVE NEVER SAID THAT YOU CAN'T RELEASE A SECURITIES FRAUD CLAIM.

THE DIFFERENCE, HOWEVER, IS THAT IN PETRO-VENTURES, THEY WERE NOT TALKING ABOUT FRAUD IN THE INDUCEMENT. THAT WAS NOT A SITUATION WHERE SOMEONE SAYS, "HERE'S THE SECURITIES. IN THE SAME CONTRACT THAT I'M GIVING YOU THE SECURITIES, I WANT YOU TO SIGN A RELEASE THAT'S GOING TO INDEMNIFY ME, OR PROTECT ME, FROM ANY SORT OF FRAUD CLAIM."

THAT SORT OF WAIVER, YOU KNOW, IN THE SAME CONTRACT, "HERE'S THE SECURITIES, AND BY THE WAY, I WANT YOU TO RELEASE ME IF I'M DEFRAUDING YOU RIGHT NOW," THAT IS NON-WAIVABLE, YOUR HONOR.

THAT'S SECTION 29(A) OF THE SECURITIES EXCHANGE ACT OF 1934. CONGRESS PUT THAT IN THERE TO MAKE SURE THAT SOMEBODY DRAFTING, YOU KNOW, CONTRACTS WHERE YOU'RE SELLING SECURITIES CAN'T STICK SOMETHING IN THERE THAT SAYS, "OH, YOU'RE WAIVING ANY SORT OF FRAUD CLAIM."

THAT, YOUR HONOR, IS WHY WE ARE

COMPLETELY DIFFERENT FROM PETRO-VENTURES. WE ARE A FRAUD IN THE INDUCEMENT CASE.

OUR ALLEGATION, AND OBVIOUSLY THEY DENY IT, BUT OUR ALLEGATION IS THAT WE WERE DEFRAUDED, WE WERE DEFRAUDED INTO ENTERING INTO THE SETTLEMENT AGREEMENT.

THAT MAKES US COMPLETELY DIFFERENT, YOUR HONOR, FROM PETRO-VENTURES.

THE -- THE -- AND I DO JUST WANT TO UNDERSCORE, THEY MAKE A BIG DEAL OUT OF 29(B). THEY SAY IT APPLIES TO CONTRACTS, NOT TRANSACTIONS.

I'M NOT EVEN SURE I UNDERSTAND IT.

BUT IF IT DOES APPLY TO CONTRACTS, WHICH IS WHAT THEY SAY IT DOES, THAT'S WHAT WE'RE LOOKING FOR HERE. WE ARE LOOKING TO AVOID THE EXACT CONTRACT THAT WE BELIEVE WE WERE DEFRAUDED INTO ENTERING INTO.

AND, YOUR HONOR, I JUST -- I DON'T SEE HOW THE NINTH CIRCUIT COULD SEE IT DIFFERENTLY. I SAY THAT RESPECTFULLY, YOUR HONOR.

AT THE VERY LEAST, THERE ARE, YOU KNOW, SUBSTANTIAL QUESTIONS OF LAW HERE THAT NEED TO BE ADDRESSED BY THE NINTH CIRCUIT.

I THINK FUNCTIONALLY WHAT THE COURT HAS DONE IS CREATED A SETTLEMENT EXCEPTION TO

SECURITIES FRAUD. IT'S THE IDEA THAT IF YOU HAVE A CONTRACT AND THERE'S SECURITIES FRAUD, YOU CAN'T REMEDY IT IF IT'S A SETTLEMENT AGREEMENT.

OR -- OR STATED -- AND I DO WANT TO BE FAIR. PERHAPS I SHOULD STATE IT DIFFERENTLY.

I'M NOT SURE IF IT'S A SETTLEMENT EXCEPTION TO SECURITIES FRAUD OR IF IT'S LIKE A MEDIATION EXCEPTION TO SECURITIES FRAUD, THAT IF THERE'S A MEDIATION INVOLVED, THAT IT SOMEHOW OBVIATES THE FRAUD.

AND, YOUR HONOR, EVEN IF THE COURT BELIEVED THAT WERE THE CORRECT DIRECTION OF THE LAW, I MEAN, THAT'S CONTRARY TO WHAT CONGRESS HAS DECREED.

CONGRESS HAS SAID THAT YOU CAN VOID A, A CONTRACT THAT IS IN VIOLATION OF THE SECURITIES LAWS.

WE DID FIND A CASE, YOUR HONOR, WHEN YOU REQUESTED IT, THAT DEALT WITH SETTING ASIDE A SETTLEMENT AGREEMENT.

IN THAT SETTLEMENT AGREEMENT, THERE WERE VIOLATIONS OF MARGIN REQUIREMENTS AND, NONETHELESS, THE SECOND CIRCUIT SET ASIDE THE, THE CONTRACT, YOU KNOW, WHICH WAS A SETTLEMENT AGREEMENT. THAT WAS PEARLSTEIN, YOUR HONOR.

NOW, THE COURT -- THE OTHER SIDE HAS NOTED THAT THAT WAS OVERRULED. IT WAS, BUT IT WAS ON DIFFERENT GROUNDS.

EXCUSE ME.

IT WAS NOT ON THE 29(B) GROUND.

BUT THAT CASE UNAMBIGUOUSLY HELD THAT UNDER THOSE CIRCUMSTANCES, BECAUSE THERE HAD BEEN A VIOLATION OF THE MARGIN REQUIREMENTS, BECAUSE THE MARGIN REQUIREMENT WAS A -- IS A VIOLATION OF FEDERAL SECURITIES LAW, THAT THE SETTLEMENT AGREEMENT WAS SET ASIDE.

NOW, IN THE COURT'S OPINION, THE COURT CORRECTLY NOTED THAT THAT WAS MARGIN REQUIREMENTS, NOT FRAUD, AND THAT'S TRUE, YOUR HONOR.

BUT THE STATUTE DOESN'T DISTINGUISH WHATSOEVER BETWEEN FRAUD AND MARGIN REQUIREMENTS. IT SAYS IF YOU VIOLATE THE SECURITIES LAWS, YOU CAN VOID THE CONTRACT.

SO, I MEAN, AT THE VERY LEAST, YOUR HONOR, I THINK WE HAVE EXTREMELY WEIGHTY ARGUMENTS HERE.

THERE IS ALSO THE IDEA IN THE FEDERAL RULES GOVERNING MEDIATION HERE IN THIS COURT THAT UNDER SOME CIRCUMSTANCES, THE COURT SHOULD PIERCE THE MEDIATION VEIL, AND WE ARGUED IN OUR PAPERS WHY

WE THOUGHT THE MEDIATION VEIL SHOULD BE PIERCED HERE.

AND, AGAIN, UNLESS I MISUNDERSTOOD THE COURT'S OPINION, YOUR HONOR, I THINK -- AT LEAST THE OPINION DOES NOT REFLECT, IN ADDRESSING A CONSIDERATION OF THE POSSIBLE EXCEPTIONS THAT WOULD LEAD ONE TO PIERCE THE MEDIATION VEIL, EVEN THOUGH THE FEDERAL RULES OF THIS DISTRICT SPECIFICALLY DO ALLOW FOR EXCEPTIONS IN, IN PIERCING MEDIATION.

SO AT THE END OF -- AND ONE LAST ISSUE.

OPPOSING COUNSEL JUST REFERRED TO THIS MOOTNESS ISSUE AND SAID THE COURTS ARE SPLIT ON WHETHER OR NOT DENYING SOMEONE AN APPEAL IS ENOUGH TO BE IRREPARABLE HARM.

AND, YOUR HONOR, AGAIN, WITH ALL RESPECT, THAT'S JUST PLAIN WRONG.

I MEAN, WE HAVE FOUND SEVERAL ARTICLE III DECISIONS THAT FLATLY HOLD THAT IF YOU'RE GOING TO BE DENIED YOUR APPEAL, THAT IS IRREPARABLE HARM. WE HAVE THREE OF THEM. THERE'S TWO IN THE BRIEF AND I CAN GIVE ONE MORE CITATION ON IT. THOSE ARE THE ONLY ONES WE FOUND.

WHEN COUNSEL SAYS THERE'S SOME SPLIT OF AUTHORITY, WHAT HE'S REFERRING TO ARE BANKRUPTCY COURTS, AND IN THE BANKRUPTCY COURTS -- AND EVEN

THERE THERE'S A SPLIT, IN BANKRUPTCY COURTS -- WHEN THEY'RE TALKING ABOUT MOOTNESS, THEY'RE NOT TALKING ABOUT CONSTITUTIONAL MOOTNESS. THEY'RE TALKING ABOUT EQUITABLE MOOTNESS.

AND THIS IS A FEATURE WHICH IS COMPLETELY UNIQUE TO BANKRUPTCY LAW. IT'S THE WHOLE IDEA THAT ONE GUY SHOULD NOT BE ABLE TO CHALLENGE ON APPEAL ONE TRANSACTION IF IT'S GOING TO BE THE THREAD THAT PULLS APART, YOU KNOW, AN ENTIRE REORGANIZATION INVOLVING 200, YOU KNOW, COMPANIES AND INDIVIDUALS.

SO IN THE BANKRUPTCY CONTEXT, YES, THERE ARE SOME CASES, AND AT LEAST ONE COURT SAID IT WAS THE MAJORITY, ALTHOUGH IT SEEMED TO ME FROM READING THE CASE IT LOOKED PRETTY CLOSE, THAT MOOTNESS, BUT NOT CONSTITUTIONAL MOOTNESS, IT'S THIS EQUITABLE MOOTNESS, WOULD NOT BE IRREPARABLE HARM.

AND YOUR HONOR, IF YOU'RE INTERESTED, I CAN CERTAINLY GIVE YOU SOME CASES ON THIS. THE CASES THAT -- THE ARTICLE III CASES THAT SAY IT IS IRREPARABLE HARM WE CITED IN OUR MOTION FOR A STAY AT PAGES 5 AND 7. ANOTHER ONE IS A FIRST CIRCUIT CASE, PROVIDENCE JOURNAL VERSUS FEDERAL BUREAU OF INVESTIGATION AT 595 F.2D 889 AT 890.

NOW, THE BANKRUPTCY COURTS AND THE DISCUSSION OF THESE POLICY REASONS AND THIS IDEA

THAT IN BANKRUPTCY COURT, MOOTNESS IS A VERY, VERY DIFFERENT THING THAN IT IS IN ARTICLE III COURTS, I WOULD REFER THE COURT TO THE NINTH CIRCUIT'S DECISION, 2007, IN SUTER, S-U-T-E-R, VERSUS GOEDERT, 504 F.3D 982, AND IT'S AT PAGE 986.

AND YOU ALSO WANT TO BE -- AS WE TRY TO THINK THROUGH, YOU KNOW, HOW IS THERE SOME WAY THAT WE CAN PRESERVE OUR APPEAL AND YET FACEBOOK GETS WHATEVER BENEFIT THEY NOW ALLEGE IS A RESULT OF GETTING THE COMPANY, THERE IS A DOCTRINE, IT'S ACTUALLY MENTIONED IN FACEBOOK'S PAPERS, CALLED DOMINIX LITIS, WHICH IS THE IDEA THAT IF ONE SIDE CONTROLS BOTH COMPANIES AND IT -- AND IT'S FORMAL AND ACTUAL CONTROL, I THINK IS THE LANGUAGE, THAT IT'S MOOT, YOU KNOW, THE FED CIRCUIT, OR THE APPELLATE COURTS WILL GET RID OF IT ON MOOTNESS GROUNDS.

SO MY CONCERN, WHAT I DO WANT TO BE CLEAR ABOUT HERE, IS THAT IF THEY -- IF WE TURNED IT OVER TO FACEBOOK, EVEN IF THEY AGREED TO KEEP IT SEPARATE, I THINK THERE WOULD BE A SERIOUS CONSTITUTIONAL ISSUE WITH RESPECT TO WHETHER OR NOT THEY'RE EVEN OWNING IT, THAT IS, THE COMPANY AS DISTINCT FROM BEING ABLE TO OPERATE IT, WOULD TRIGGER THIS DOCTRINE OF DOMINIX LITIS.

I'D ALSO LIKE TO MAKE ONE LAST POINT, AND IT'S THIS IDEA THAT WE SOMEHOW, YOU KNOW, ADVISED THEM FOR THE FIRST TIME AT 2:14 OR WHATEVER IT WAS, I THINK THAT'S JUST OVER THE TOP.

AND I'M NOT SOMEONE THAT GETS OFFENDED EASILY, BUT FROM THE VERY BEGINNING, ALL THE WAY BACK AT ORAL ARGUMENT ON JULY 2, MY PARTNER, DAVID BARRETT, MADE THE POINT THAT WE WERE LOOKING FOR SOME WAY TO HOLD THE STATUS QUO.

I HAVE WORKED BOTH INDIVIDUALLY WITH MR. FISHER, AND IN CONVERSATIONS WITH MR. CHATTERJEE ON THE LINE WHEN MR. FISHER WAS THERE TO TRY TO REACH SOME KIND OF A, YOU KNOW, ACCOMMODATION WHERE WE COULD GO FORWARD.

I HAVE NEVER IN MY LIFE, YOUR HONOR, BEEN IN CONTEMPT OF A COURT ORDER, AND IT'S NOT SOMETHING THAT I'M GOOD AT DOING OR COMFORTABLE AT DOING.

BUT I'VE GOT TO FIGURE OUT SOME WAY THAT WE GET A, AN APPEAL TO THE NINTH CIRCUIT.

ONE OF THE THINGS THAT I'D LIKE TO BRIEFLY TOUCH ON IS THE PRIOR MOTION BECAUSE I THINK IT DIRECTLY RELATES HERE.

I DO BELIEVE MR. CHATTERJEE'S STRATEGY IS, YOU KNOW, IF THE INDIVIDUALS HAVE TO COME IN, THAT THEIR, THEIR ABILITY IS GOING TO BE SO CIRCUMSCRIBED THAT BY THE TIME THEY GET TO THE NINTH CIRCUIT, MR. CHATTERJEE IS GOING TO BE ARGUING THAT THEY SET IT OUT IN THE DISTRICT COURT, SO THEREFORE, THEY'RE NOT ALLOWED TO CHALLENGE ALL THESE ISSUES I'VE BEEN TALKING ABOUT, THIS IDEA OF HOW YOU INTERPRET 29(A), HOW YOU INTERPRET 29(B), THE IDEA OF THE NINTH CIRCUIT LAW AND THE CALIFORNIA REPORTER DECISION ABOUT HOW THE JUDGE IS REQUIRED TO LOOK BEYOND THE FOUR CORNERS OF THE AGREEMENT.

MY CONCERN IS, YOU KNOW, HIS ARGUMENT IS GOING -- THEY DON'T EVEN GET TO MAKE THOSE ARGUMENTS. THEY CAN ARGUE ABOUT WHETHER OR NOT THE JUDGMENT APPLIES TO THEM, BUT THEY'RE NOT GOING TO GET TO DO THE UNDERLYING MERITS.

AND THEN, IF YOU CAN FIGURE OUT A WAY TO KEEP CONNECTU FROM BEING ABLE TO RAISE THOSE THINGS AT THE NINTH CIRCUIT, HE WILL HAVE WON BY DEFAULT.

AND I'M TRYING TO PREVENT THAT, YOUR HONOR. MY CLIENT IS OPEN TO ANYTHING TO PRESERVE A REAL APPEAL TO THE NINTH CIRCUIT WHERE WE CAN RAISE WHAT WE THINK ARE EXTREMELY STRONG LEGAL ARGUMENTS.

THAT'S ALL I HAVE, YOUR HONOR.

MR. O'SHEA: YOUR HONOR, YOUR HONOR --

OH, I'M SORRY.

YOUR HONOR, ON BEHALF OF THE INDIVIDUAL SHAREHOLDERS, WE JOIN IN THE MOTION FOR A STAY.

THE COURT: THANK YOU.

MR. CHATTERJEE: YOUR HONOR, PAGE 11 OF YOUR ORDER, THIS IS WHAT YOU SAID. "WITHOUT A SHOWING BY DEFENDANTS OF A MATERIAL MISREPRESENTATION OR OMISSION IN THE NEGOTIATIONS, THE COURT FINDS NO BASIS TO DECLINE ENFORCEMENT."

THAT'S A FACTUAL FINDING, YOUR HONOR. THERE'S NO -- THERE'S NO LEGAL, SUBSTANTIAL QUESTION OF LAW THERE ON THE MERITS.

WE CAN GO THROUGH THE REST OF WHAT WE PUT IN OUR BRIEF, BUT IT'S GETTING LATE IN THE DAY AND I DON'T WANT TO SPEND TIME ON THAT.

ON THE HARM ISSUE, I'LL JUST POINT YOUR HONOR TO PAGES 14 AND 15 OF OUR BRIEF. WE CITE ALL THE CASES RELATED TO THIS MOOTNESS ISSUE WE'RE DISCUSSING.

WE ARE GROSSLY OVER TIME WITH WHAT YOUR HONOR HAD ASKED, SO I DON'T WANT TO SPEND MORE TIME UNLESS THERE'S A QUESTION THE COURT WOULD LIKE US TO ADDRESS.

THE COURT: NO. I WAS GOING TO PUT A QUESTION TO MR. FISHER, SINCE I HAVE THE BENEFIT OF

HIS PRESENCE, AND THEN I WANT TO TAKE THIS UNDER SUBMISSION AND DECIDE WHAT TO DO.

BUT ONE OF THE SUGGESTIONS THAT I'VE HAD IS THAT YOU BE PUT IN A POSITION WHERE YOU'RE OPERATING THIS COMPANY.

THAT'S INCONSISTENT WITH WHAT I THINK IS ULTIMATELY TO THE BENEFIT OF THE JUDGMENT THAT'S BEEN ENTERED.

BUT IS THAT -- THAT'S A TASK THAT I HAVEN'T ASSIGNED TO YOU AT THIS POINT.

WHAT'S YOUR COMMENT ON YOUR WILLINGNESS TO UNDERTAKE THAT SHOULD THE COURT FIND THAT TO BE EFFICACIOUS?

MR. FISHER: WELL, BASED UPON MR. UNDERHILL'S REPRESENTATION OF WHAT IT IS, I DON'T HAVE ANY PROBLEM DOING THAT OR, YOU KNOW, PURSUANT TO COURT ORDERS OR WITH THE CONSENT OF THE PARTIES.

I THINK THE MAIN POINT THERE, AND IT'S ONE THAT WE'VE COME TO LOGGERHEADS IN TRYING TO REACH AN AGREEMENT, IS OPERATING AN EXISTING COMPANY VERSUS CHANGES OR WHATEVER. THAT'S ONE ELEMENT.

BUT THEN HAVING TO DO WITH THE RIGHT TO APPEAL AND HAVING TO DO WITH THE MALPRACTICE CASE, YOU KNOW, THOSE ARE SEPARATE. IT'S MORE OF SEPARATION OF A BUSINESS THAN THE CORPORATE ENTITY.

SO, YOU KNOW -- AND WE EXPLORED, OR TRIED TO EXPLORE, SOME WAYS OF, OF DEALING WITH, WITH THE RIGHT TO APPEAL OR WITH THE MALPRACTICE CASE AND WE DIDN'T GET VERY FAR.

SO I CAN'T HOLD OUT A WHOLE LOT OF ENCOURAGEMENT ON WAYS TO DEAL WITH THOSE. WE COME TO THE SAME POSITIONS THAT WE ARE IN NOW AS TO WHETHER THERE IS A RIGHT TO APPEAL OR NOT.

MR. CHATTERJEE: YOUR HONOR, IF THE COMPANY WERE -- THE FIRST STEP IS OBVIOUSLY TO GET THE SHARES INTO MR. FISHER'S HANDS, AND THAT, THAT NEEDS TO HAPPEN SOMEHOW.

BUT IF HE WERE TO OPERATE THE COMPANY, I THINK THERE WOULD STILL BE A PRETTY SUBSTANTIAL BOND NECESSARY BECAUSE WE WOULDN'T BE ABLE TO GET THE VALUE THAT WE'VE PAID FOR.

WHETHER IT'S IN HIS HANDS OR IN THEIRS, WE'RE STILL NOT GETTING THE VALUE OF WHAT WE PAID FOR THROUGH THE SETTLEMENT.

SO I'M NOT SURE -- FROM THAT PERSPECTIVE, I ALSO SEE A SIGNIFICANT PROBLEM.

THE COURT: DID I UNDERSTAND YOU TO SAY THAT CONNECTU HAS INITIATED THIS LITIGATION, THIS

MALPRACTICE CASE, OR IS THAT DONE BY THE INDIVIDUALS ONLY?

MR. CHATTERJEE: BOTH, YOUR HONOR. MR. O'SHEA CURRENTLY REPRESENTS CONNECTU AGAINST THE -- AGAINST THE QUINN, EMANUEL FIRM.

MR. O'SHEA: MAY I SPEAK TO THAT, JUDGE?

FIRST OF ALL, IT'S NOT TRUE.

WHAT HAPPENED IS QUINN, EMANUEL FILED AN ARBITRATION, YOUR HONOR, AND WE MOVED TO STAY THE ARBITRATION.

IT WAS A MOTION. IT'S NOT A -- THERE HASN'T BEEN A MALPRACTICE ACTION FILED AT THIS TIME.

JUSTICE LOWE, WHO WE ARGUED THE MOTION IN FRONT OF, WAS VERY CONCERNED ABOUT QUINN, EMANUEL'S TACTICS IN THEIR RETAINER LETTER, WHICH SHORTENS THE TIME LIMITATIONS, THE STATUTE OF LIMITATIONS FOR THE CLIENT, BUT NOT FOR THEM. THEY HAVE A SIX YEAR STATUTE.

IT SHORTENS THE ALREADY SHORT STATUTE OF THREE YEARS AGAINST THE LAWYER TO ONE YEAR, AMONG OTHER THINGS THAT ARE IN THEIR RETAINER LETTER.

JUSTICE LOWE HAS THAT NOW UNDER ADVISEMENT AND HE'S SAID HE WILL BE QUICK WITH A DECISION.

BUT THE STATEMENT IS INACCURATE TO SAY THAT WE BROUGHT AN ACTION. WE DIDN'T FIRE THE FIRST SHOT, JUDGE.

IT WAS QUINN, EMANUEL WHO DID IT.

WE FILED A MOTION TO STAY THE ARBITRATION BECAUSE WE OFFERED QUINN, EMANUEL -- AND I HAVE E-MAIL EXCHANGES TO SHOW THIS -- WE OFFERED QUINN, EMANUEL A STANDSTILL IF THEY WOULD TOLL THE STATUTE THAT'S CONTAINED IN THEIR RETAINER LETTER THAT WOULD HAVE EXPIRED WHILE THIS APPEAL WAS PENDING. WE WERE VERY CONCERNED ABOUT THAT.

THEY REFUSED TO DO THAT, AND THAT'S WHY WE MOVED TO STAY THE ARBITRATION.

AS WE STAND HERE, JUDGE, THERE IS NO MALPRACTICE ACTION AGAINST QUINN, EMANUEL.

MR. CHATTERJEE: YOUR HONOR --

THE COURT: AND THEN I WOULD WISH CONNECTU TO CONFIRM TO ME THAT YOU HAVE FILED, AND THERE IS CURRENTLY PENDING, A NOTICE OF APPEAL FROM THE JUDGMENT.

MR. UNDERHILL: THAT IS CORRECT, YOUR HONOR.

AND OUR BRIEF, BY THE WAY, IS DUE IN THE NINTH CIRCUIT, I THINK IT'S AUGUST 15. PLEASE DON'T HOLD ME TO THAT, BUT IT'S SOMETHING LIKE

THAT.

AND, YOUR HONOR, MAYBE THIS IS A GOOD TIME TO BRING UP THIS EXPEDITED APPEAL THING. I'LL AGREE RIGHT NOW. WE'LL EXPEDITE IT. WE WILL PURSUE IT LIKE CRAZY.

THE COURT: THAT'S NOT SOMETHING THAT WOULD BE BENEFICIAL TO DISCUSS HERE BECAUSE THAT'S NOT SOMETHING THAT THIS COURT COULD ACCEPT OR CONTROL OR DO ANYTHING ABOUT.

MR. UNDERHILL: BUT MR. CHATTERJEE COULD IF HE WAS WILLING TO AGREE TO IT, AND HE DOESN'T.

THE COURT: BUT THIS IS THE IMPROPER FORUM FOR THAT.

MR. UNDERHILL: OF COURSE, YOUR HONOR.

THE COURT: WELL, I'VE BENEFITED FROM THE ARGUMENT.

I ALSO WANT TO KEEP TO THE TIME, SO I'M GOING TO TAKE THIS MATTER UNDER SUBMISSION.

I'LL ASSURE BOTH SIDES, OR ALL THREE SIDES I GUESS NOW, THAT I'LL MAKE A DECISION VERY QUICKLY.

I'M NOT SURE I CAN GET IT OUT -- I'M IN THE MIDDLE OF A CRIMINAL TRIAL AND THE JURY IS OUT, SO THAT'LL OCCUPY ME A LITTLE BIT TOMORROW.

BUT I DO WANT TO BRING THIS TO A QUICK

DECISION SO THAT ANY ACTION THAT YOU WANT TO TAKE CAN BE TAKEN.

I'VE BEEN TOLD OF ONE DEADLINE THAT HAS PASSED. WHEN IS -- WHEN IS THE NEXT EVENT THAT NEEDS TO TAKE PLACE WITH RESPECT TO THE ORDER THAT I PUT IN PLACE AS TO THE SEQUENCE OF EVENTS TO CARRY OUT THE JUDGMENT?

MR. CHATTERJEE: THAT WAS THE --

MR. UNDERHILL: I THINK THAT FALLS IN YOUR COURT, YOUR HONOR.

WITH RESPECT TO THE PARTIES' SUBMITTED PROPOSED DRAFT RELEASES, I BELIEVE THE COURT'S ORDER SAYS THAT THE COURT WILL THEN TAKE THOSE AND, YOU KNOW, SUBMIT WHAT IS TO BE THE -- WHAT IS SUPPOSED TO BE THE FINAL RELEASE.

THE COURT: OKAY. AND THEN THERE WAS SOME MENTION OF A DEFAULT WITH SOMEBODY TO THE SUBMISSION OF STOCK.

MR. CHATTERJEE: YES, YOUR HONOR.

THERE WERE TWO THINGS THAT WERE DUE ON MONDAY FROM BOTH SETS OF PARTIES. ONE OF THEM WERE THE DISMISSALS OF THE CASES, AS OPPOSED TO THE RELEASES.

AND IN OUR CONVERSATIONS WITH MR. FISHER, WE -- AT LEAST MR. FISHER AND I, I DON'T THINK

MR. UNDERHILL WAS ON THE PHONE -- DECIDED THAT HE SHOULD BE THE CUSTODIAN OF THEM, RATHER THAN JUST FILING THEM. THE ORDER WASN'T ENTIRELY CLEAR ON THAT POINT.

AND THE SECOND WAS THE CONNECTU STOCK WAS SUPPOSED TO BE IN HIS HANDS.

WE SUBMITTED EVERYTHING OF THOSE TWO PIECES THAT WERE LEFT.

SO FAR CONNECTU AND THE INDIVIDUALS HAVE SUBMITTED NOTHING.

MR. UNDERHILL: THAT'S CORRECT, YOUR HONOR.

AND IF I MAY SPECIFICALLY SAY SOMETHING ABOUT THE DISMISSALS, PLEASE?

THE DISMISSALS ARE FOR TWO ACTIONS. WE'RE ON THE OFFENSE IN MASSACHUSETTS. THAT'S THE MAIN CLAIM. THAT'S THE ONE THAT LED TO THE SETTLEMENT.

WE'RE ON THE DEFENSE IN CALIFORNIA.

THE COURT'S ORDER HAD TO DO WITH DISMISSALS IN BOTH ACTIONS, AND AGAIN, ALTHOUGH MUCH OF OUR DISCUSSION HERE TODAY IS FOCUSSED ON THE STOCK BEING TRANSFERRED, THERE ARE INCREDIBLY SERIOUS APPELLATE ISSUES ASSOCIATED WITH THE DISMISSALS AS WELL.

SPECIFICALLY, IF WE VOLUNTARILY GO TO MASSACHUSETTS OR VOLUNTARILY GO WITH A GUN AT OUR HEAD FROM AN ORDER FROM A CALIFORNIA COURT AND FILE A STIPULATION OF DISMISSAL, AT LEAST SO FAR, YOUR HONOR, I DON'T SEE HOW WE CAN THEN RESURRECT THAT CASE.

AND I'M NOT CERTAIN OF THIS, AND MAYBE THERE'S A LEGAL WAY TO DO IT, IF WE GO UP TO THE NINTH CIRCUIT, ARE SUCCESSFUL, WE COME BACK DOWN, THE QUESTION THEN BECOMES, YOU KNOW, WHAT HAPPENS TO OUR OFFENSIVE CLAIMS IF INDEED WE HAVE DISMISSED IN MASSACHUSETTS?

THE COURT: WELL, I UNDERSTAND THAT. THAT'S WHY I INCLUDED IN MY JUDGMENT CERTAIN STEPS WHERE YOU'D HAVE TO COME BACK TO THE COURT AND THAT WOULD GIVE ME AN OPPORTUNITY TO DETERMINE WHETHER I SHOULD ORDER THE PARTIES TO TAKE ANOTHER STEP.

OF COURSE, THAT IS ALL SUBJECT TO VARIOUS APPEALS OR REQUESTS FOR WRITS DIRECTED TOWARD MY CONDUCT.

YOU'RE DOING A GOOD JOB OF ANSWERING MY QUESTIONS. THIS IS GOING A LITTLE BIT BEYOND IT.

SO I JUST -- IT DOES SEEM TO ME THAT WHAT I NEED TO DO NOW IS DECIDE WHETHER OR NOT TO GRANT THE MOTION TO STAY AND TO GRANT THIS INTERVENTION.

TO THE EXTENT THERE HAS BEEN A DEFAULT, WHEN IT CAME TO MY ATTENTION, I ASSUMED THAT IT WAS IN VIEW OF THESE MOTIONS AND THAT THERE IS NO CONTEMPT OF THE COURT, IT WAS SIMPLY JUST AN EFFORT ON THE PART OF THE PARTIES TO TAKE ADVANTAGE OF HAVING THE COURT HEAR THESE MATTERS BEFORE TAKING ANOTHER STEP, THINKING THAT IT WOULD BE -- THAT THEY MIGHT WIN AND, THEREFORE, NOT BE NECESSARY TO TAKE THE STEP.

BUT I'LL TAKE THAT INTO CONSIDERATION IN MAKING MY RULING HERE.

MR. CHATTERJEE: YOUR HONOR, RESPECTFULLY, I DISAGREE ON THAT ONE.

WE PUT OUR -- WE PUT A HUGE AMOUNT OF CONSIDERATION INTO MR. FISHER'S HANDS ON MONDAY.

THE COURT: YES.

MR. CHATTERJEE: AND THEY'VE PUT NOTHING.

AND THIS ORDER SPECIFICALLY SAID UNLESS OTHERWISE ORDERED BY THE COURT, THEY HAD TO DO IT ON MONDAY.

THE COURT: YES.

MR. CHATTERJEE: THEY DIDN'T EVEN FILE --

THE COURT: YES, I UNDERSTAND.

IF THERE -- IF YOU WANT TO, IN DUE COURSE, BRING SOME MATTER BEFORE THE COURT ASKING

ME TO HOLD THEM IN CONTEMPT OF THAT, YOU CAN.

BUT I THINK THAT I CAN HANDLE JUST THE, THE DEFAULT BETWEEN WHATEVER PERIOD OF TIME THAT -- I THINK WE'RE TALKING A MATTER OF DAYS, THEN.

MR. CHATTERJEE: A MATTER OF DAYS.

THE COURT: I CAN HANDLE THAT IN SAYING "YOU'RE EXCUSED" OR "YOU'RE ORDERED TO DO IT" AND GIVE ANOTHER DEADLINE THAT WOULD BE REASONABLE UNDER THE CIRCUMSTANCES.

BUT I'LL TAKE THE MATTER UNDER SUBMISSION.

THANK YOU ALL.

MR. O'SHEA: AND, YOUR HONOR, JUST ONE -- WE WILL NEED PROBABLY THE 30 DAYS UNDER RULE 4 FOR GOOD CAUSE SHOWN WHILE THE MATTER IS SUB JUDICE FOR OUR MOTION TO INTERVENE.

I DON'T KNOW HOW LONG IT'LL TAKE THE COURT TO ACT ON THAT, BUT I WOULD LIKE TO ALERT THE COURT THAT --

THE COURT: YOU NEED 30 DAYS FOR WHAT?

MR. O'SHEA: 30 DAYS TO FILE OUR APPEAL, BECAUSE WE HAVEN'T FILED OUR APPEAL YET BECAUSE THE INTERVENTION HADN'T BEEN GRANTED.

THE COURT: I'M NOT SURE I CONTROL THAT.

BUT TO THE EXTENT I CONTROL IT, I THOUGHT

YOU SAID 14 DAYS EARLIER. I HEAR YOU NOW TO SAY 30 DAYS.

MR. O'SHEA: I GUESS I THOUGHT I WAS GOING TO GET A DECISION TODAY, JUDGE, AND I GUESS I PERHAPS WAS OVERLY OPTIMISTIC.

THE COURT: THANK YOU.

MR. CHATTERJEE: THANK YOU, YOUR HONOR.

MR. UNDERHILL: THANK YOU.

(WHEREUPON, THE EVENING RECESS WAS TAKEN.)